

1 UNITED STATES DEPARTMENT OF AGRICULTURE
2 BEFORE THE SECRETARY OF AGRICULTURE

3 IN re: Docket #AO-F&V-991-A3; FV03-991-01
4 HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO AND
5 CALIFORNIA
6

7 Hearing held on the 24th day of October, 2003

8 at 8:30 a.m.

9 Doubletree Hotel Yakima Valley
10 1507 North 1st Street
11 Yakima, Washington 98901

12 TRANSCRIPT OF PROCEEDINGS
13
14

15 BEFORE: HONORABLE JILL S. CLIFTON

16
17
18 FOR PROPONENTS:

19 BRENDAN MONAHAN, ESQUIRE

20 FOR OPPONENTS:

21 JAMES MOODY, ESQUIRE
22

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P R O C E E D I N G S

October 24, 2003

ADMINISTRATIVE LAW JUDGE: We're on record at 8:33 a.m. It's Friday, October 24, 2003. We're in Yakima, Washington. This is the final day of the rulemaking hearing and this is day eight. The caption of the case is In re: Hops produced in Washington, Oregon, Idaho, and California. The Docket Number is AO-F&V-991-A3;FV03-991-01. This is volume eight of the transcript and the transcript for this day should be numbered sequentially to that of yesterday. Mr. Monahan, you may proceed.

MR. MONAHAN: Your Honor, you may have heard this before. We have good news and we have bad news. The proponents committee and it's consultant, Mr. Christensen, spent a long time working trying to refine the definition of handle and we have made some changes that are probably -- could probably be described as fundamental changes, bringing us back closer to the very first definition that we started the hearing with, but we believe it is an improvement. Mr. Roy is going to talk about it. The bad news is that the final revisions were made this morning at breakfast and we will not have a hard copy until the copy's e-mailed to Mr. Roy's ranch and delivered in. We do have, for illustrative

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1 purposes, the current verbiage as proposed. Mr. Roy
2 will take the stand to describe why the changes were
3 made and I'll just -- I will describe for the USDA and
4 for the opponents the revision that was made that brings
5 us back, sort of, to the point of beginning, is that it
6 will no longer be considered handling to simply process
7 one's hops. The reason, as Mr. Roy will describe, is
8 that there were too many conflicts with the concept of
9 reserve pool and it would've, we think, required too
10 many substantive revisions and just practical concerns
11 and Mr. Roy will describe those when he takes the stand.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Monahan. Other preliminary matters? I was reminded of
14 one by USDA representatives. The reason five o'clock is
15 our deadline tonight is this room is being used. We
16 must complete, hopefully, before 5:00 so that set-up can
17 be done in here for a 5:30 meeting, so we don't have any
18 leeway on that. If you want to have a very shortened
19 lunch, we could do that, but we'll have to move quickly
20 today. Other preliminary matters? Ms. Deskins?

21 MS. DESKINS: Judge Clifton, we also have Dr.
22 Hinman, who had some additional material that he had
23 requested to put on, so some -- whenever you would like,
24 he can go on and also, I'd just like to remind people if
25 they have any documents or evidence they want to put in,

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1 they need to put it in before the close of hearing
2 because once it closes we cannot accept any other
3 evidence because sometimes people will try to send us
4 e-mail or letters and we can't accept it after the close
5 of the hearing.

6 ADMINISTRATIVE LAW JUDGE: Thank you very
7 much.

8 MR. MOODY: With that reminder, I would like
9 to present as evidence on behalf of the proponents
10 committee a letter prepared by Michael Broadhead, who is
11 the president of Central Valley Bank. We've heard some
12 testimony from both sides about how forward contracts
13 and other issues, perhaps even a marketing order might
14 affect banking decisions to the hop industry and Mr.
15 Broadhead, who is unfortunately not available for live
16 testimony, has prepared a letter to that effect. We do
17 understand on the proponents committee that Mr.
18 Broadhead's unavailability for cross-examination will go
19 the weight, or effect the weight of this letter, but we
20 would seek to introduce it as an exhibit, nevertheless.

21 ADMINISTRATIVE LAW JUDGE: This is Central
22 Valley Bank in Toppenish, Washington. I'm going to mark
23 the letter as Exhibit 52, 5-2. I'd like to go off
24 record so that you have an opportunity to read it and
25 given the fact that there is no ability to cross-

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1 examine, I would ask if the parties would stipulate to
2 its contents or something of the like. Mr. Moody?

3 MR. MOODY: Actually...

4 ADMINISTRATIVE LAW JUDGE: Can you...

5 MR. MOODY: Oh, sorry.

6 ADMINISTRATIVE LAW JUDGE: ...speak into...

7 MR. MOODY: Sorry, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Thank you.

9 MR. MOODY: I don't mind it being marked and
10 carried along with the record, but under the APA [ph],
11 this has no weight since it's not subject to cross-
12 examination and so it can't be admitted as a exhibit and
13 this is the sort of thing that, you know, belongs in the
14 pre-hearing comment file or the post-hearing brief file
15 or something like that, but it's just not evidence under
16 -- that the Secretary can rely on in making any kind of
17 a decision in this proceeding.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
19 Moody. We'll go off record while people have an
20 opportunity to consider it.

21 ***

22 [Off the Record]

23 [On the Record]

24 ***

25 ADMINISTRATIVE LAW JUDGE: We're back on
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1 record at 8:40. Are you absolutely sure Mr. Broadhead
2 is not available to appear?

3 MR. MONAHAN: I am, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: Would this
5 document, by any chance, be stipulated for admission
6 into evidence? Mr. Moody?

7 MR. MOODY: You know, Your Honor, that's kind
8 of the problem with the structure of the hearings under
9 Section IV of the Act. That's why we have formal
10 hearings as opposed to notice and comment rulemaking.
11 But it provides a unique opportunity to test and
12 evaluate the evidence rare in the administering of law
13 today. The rules are quite strict and if this were the
14 -- it would just like Notice of Conduct Rulemaking and
15 both sides would be out, you know, getting piles of
16 letters and telegrams and stuff and it's no point in us
17 all getting together here for our learned exchange of
18 views on the subject. It's kind of, you know, a
19 threshold requirement. It just defeats the purpose
20 under Section IV of having a formal hearing.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
22 Moody. Mr. Carswell?

23 MR. CARSWELL: Your Honor, I would just note
24 that a couple of the points here, such as the
25 characterization of this as a voluntary control and also

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1 the fact that hop -- most commodities including hops are
2 being sold below the cost of production. Those are
3 important issues that require fleshing out and we -- I
4 don't believe we've had any direct testimony to that
5 effect with respect to that last point, and it's an
6 important point.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank
8 you, Mr. Carswell. I take it then that you, Mr. Moody,
9 object to the admission into evidence of Exhibit 52?

10 MR. MOODY: Yes, Your Honor, but I -- you
11 know, it's not that I don't like Mr. Broadhead. The
12 lenders are often witnesses at these hearings. I wish
13 he could be here.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
15 Moody. Mr. Carswell, do you also object to the
16 admission into evidence of Exhibit 52?

17 MR. CARSWELL: Yes, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right. Exhibit
19 52 will remain part of the record, but I will not
20 receive it as evidence. It will be with the record, but
21 one that was rejected as an exhibit and if for any
22 reason Mr. Broadhead should be able to appear, that
23 would change.

24 MR. MONAHAN: Your Honor, I would request that
25 -- I understand the points of Counsel and just request

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1 that the letter, hand-delivered in Portland, apparently
2 drafted by Mr. Von Eyckel, who was not able to show up
3 and testify here in the Yakima proceedings be handled in
4 the same manner.

5 ADMINISTRATIVE LAW JUDGE: All right, I think
6 I already admitted it into evidence. Let me see.

7 MR. MONAHAN: Your Honor, just for the record,
8 I -- from the proponents committee perspective, whether
9 Mr. Von Eyckel's letter is an exhibit in evidence or not
10 is largely immaterial because of the way we believe it
11 should be afforded.

12 ADMINISTRATIVE LAW JUDGE: All right. I know
13 that that is Exhibit 23. I did admit it, but we're now
14 on notice and I appreciate that, Mr. Monahan, that it
15 may not be entitled to weight. All right. Mr. Moody?

16 MR. MOODY: Yes, Your Honor, thank you. I
17 wasn't -- you know, I wasn't trying to pull a fast one
18 with Mr. Von Eyckel's letter, it -- you know, I know the
19 law as well as everybody else, it's just that he sent an
20 employee to read the letter into the record and was
21 available for cross-examination, so whether you want to
22 call it in effect the statement of the employee, or
23 employee is agent for Mr. Von Eyckel, or whatever, or
24 say arguably it would be entitled to a little less
25 weight, that's fine, but weight is quite a different

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1 concept in admissibility.

2 ADMINISTRATIVE LAW JUDGE: The only thing the
3 witness in that case was able to do was verify the
4 source of the letter. It's true that's a little more
5 than we have here in that it was testimony rather than
6 representation of counsel, but they're really quite
7 equivalent. I would like to point out, Mr. Moody's made
8 an important point that the type of rulemaking hearing
9 that we are enjoying here is rare in administrative law
10 and it's been a delight for me, working with the
11 Department of Agriculture, to see that the Secretary
12 does do rulemaking in this fashion, which many
13 departments do not and the Secretary does come to the
14 "grass roots" level and invite comment from all those
15 concerned. And it takes a long time and it's a very
16 expensive process and a very good one, I think. All
17 right, Mr. Monahan?

18 MR. MONAHAN: Thank you, Your Honor. With
19 that we would present Mr. Roy as a witness to describe
20 the definition of handling.

21 ADMINISTRATIVE LAW JUDGE: Mr. Roy, would you
22 state -- oh, Mr. Moody?

23 MR. MOODY: Yes, Your Honor, do they have just
24 one extra perhaps we could use for a while?

25 ADMINISTRATIVE LAW JUDGE: Yes. Is there one?

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1 MR. MONAHAN: Your Honor, this really has been
2 an ultimate work-in-progress that we finished at the
3 Waffle House at about 8:10.

4 ADMINISTRATIVE LAW JUDGE: And you don't even
5 one?

6 MR. MONAHAN: I do not have one.

7 ADMINISTRATIVE LAW JUDGE: We can take a quick
8 break.

9 MR. MONAHAN: Your Honor, this definition has
10 been e-mailed to Roy Farms.

11 MR. ROY: Yeah, it should be on its way here
12 shortly.

13 MR. MOODY: Okay. I think we can make do for
14 a while. We've got an adept hieroglyphs specialist to
15 prepare a written copy.

16 ADMINISTRATIVE LAW JUDGE: All right. Thank
17 you, Mr. Moody. Mr. Roy, would you state your full name
18 for us and spell it for the record?

19 MR. ROY: My name is Leslie Roy, L-e-s-l-i-e
20 R-o-y is the last name. Middle initial A.

21 ADMINISTRATIVE LAW JUDGE: A as in apple?

22 MR. ROY: Yes. As in Alan.

23 ADMINISTRATIVE LAW JUDGE: As Alan -- oh,
24 that's correct.

25 MR. MONAHAN: As alpha.

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1 ADMINISTRATIVE LAW JUDGE: As alpha? A as in
2 alpha. And how is Alan spelled.

3 MR. ROY: A-l-a-n.

4 ADMINISTRATIVE LAW JUDGE: All right, thank
5 you. Mr. Roy, you remain sworn and you may proceed.

6 MR. ROY: I think we have a definition for
7 handler that hopefully everybody will agree on. I can
8 read it into the record. I'll have to read it off the
9 screen here. This is in reference to 991.08 Handle.
10 "Handle means to acquire hops from a producer, sell hops
11 to an end-user or foreign purchaser or transfer hops
12 from the production area to a point outside the
13 production area provided that the transfer of hops to
14 another producer pursuant to 991.56 A, the preparation
15 of hops for market, or the purchase of hops by a brewery
16 shall not be considered to be handling. And further
17 provided that 1) preparation of hops for market means to
18 palletize raw hops or to extract alpha acids from hops.
19 2) acquire hops means to purchase hops from a producer
20 or to accept hops from a producer an a consignment
21 contract. 3) end user means a brewer or other person
22 who utilizes hops. Foreign purchase means any person
23 who purchased hops directly from a producer and who does
24 not maintain offices or licenses in the United States.

25

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1 LESLIE ROY,
2 having been previously sworn, according to the law,
3 testified as follows:

4 BY MR. MONAHAN:

5 Q. Now, Mr. Roy, the big change from the
6 most recent effort at defining handle has been to remove
7 from the definition that process that happens when a
8 farmer -- when a producer palletizes his hops.

9 A. That's correct.

10 Q. Why has that been removed?

11 A. Well, in our discussions among ourselves
12 and other people, it was determined that many growers,
13 as was presented here in this testimony, can prepare
14 their hops for storage, which would be palletize or
15 extract, and if handle were to take place at that time,
16 then the allotment would have to be adjusted up or down.
17 Or down, I guess. And that really enhindered [ph] the
18 movement of hops, so in other words, if a grower had
19 variety A and variety B, if he was processing both those
20 hops, he would have to determine at that time of
21 handling which hops he was going to take off his
22 allotment sheet. So similar to the mint order, we
23 decided as a best -- it was in the best interest of the
24 industry and the flexibility needed to move the proper
25 hops into the demand channel, that we -- handling would

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1 take place at the time of purchase. So handling -- and
2 it -- just processing the hops into the pellets or some
3 more stable form would not be considered to be handling.
4 At the grower level.

5 Q. Just as a follow-up, then sir, with this
6 current definition, when and what -- and in what
7 circumstances does a producer handle hops?

8 A. A producer would handle hops if were to
9 sell them directly to an end-user. If a producer were
10 to deliver them to a consignment operation, those are
11 both considered to be handling.

12 Q. Well, if the producer delivers them to a
13 consignment operation, who's the handler?

14 A. The producer. Or the consignment...

15 Q. Okay.

16 A. Yeah.

17 Q. What -- I'd like you to describe for the
18 USDA, if you would, are those situations in which the
19 producer is the handler -- you've identified one, when
20 you sell to an end-user -- what other situations would a
21 producer be considered a handler?

22 A. Well, if the producer sells -- when he
23 sells the hops.

24 Q. So if a producer sells to a foreign
25 purchaser...

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1 A. That would be -- he would be the handler.

2 Q. Who's the handler?

3 A. The producer.

4 Q. If a producer ships hops to a storage
5 facility in Montana or outside the production area...

6 A. The producer is the handler.

7 Q. And when have they been handled for that
8 purpose?

9 A. At the time of movement.

10 Q. If a producer sells to a dealer...

11 A. Yes. Then the...

12 Q. ...who's the handler?

13 A. The dealer is the handler.

14 Q. Okay. And when does handling occur?

15 A. At the time of movement -- or at
16 acceptance of the hops.

17 Q. If the producer decides that he or she
18 wants to carry some reserve pool hops...

19 A. Correct.

20 Q. ...in extracted form...

21 A. Correct. At the time of sale, it
22 would...

23 Q. Let me finish. In this case the producer
24 has actually grown more than his or her allotted
25 percentage. With me so far?

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1 A. Yes.

2 Q. Decides to process 100 percent of the
3 amount of hops that have been grown, okay? Does the act
4 of just processing them constitute handling?

5 A. No.

6 Q. Even if they take -- if the grower takes
7 it to a Steiner or a John H. Haas to have them
8 processed, does that constitute handling?

9 A. No.

10 Q. When do they become handled?

11 A. When they're actually sold.

12 Q. And does the theory behind this new
13 concept or this old concept enable to the producer to be
14 flexible in what varieties he or she shows -- sells
15 throughout the marketing season?

16 A. That's correct. We felt that with, you
17 know, with the advent of ISO 9,000, HACCP, Euroquip,
18 many of these of programs that requiring traceability
19 through the whole process, there's going to be paper
20 trails of all these products. So to -- we don't see
21 this as any additional on the process because
22 traceability's becoming a big issue, so we'll be able to
23 track these hops through the process very easily.

24 ***

25 MR. MONAHAN: Thank you, Mr. Roy.

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1 ADMINISTRATIVE LAW JUDGE: Mr. Roy, when you
2 said Europquip and some of those things just before
3 that...

4 MR. ROY: Yes.

5 ADMINISTRATIVE LAW JUDGE: What are those and
6 how do you spell them?

7 MR. ROY: ISO 9,000 is I-S-O then the number
8 9,000. HACCP is an acronym for -- I'm not sure what it
9 is, but it's H-A-A-C-P. And then Europquip is Euro,
10 E-u-r-o-q-u-i-p, I believe. And that is a protocol
11 coming out of the European Union. Basically, it has to
12 do with traceability all the way through the process.
13 Apples are -- as an example, apples are taken on some of
14 the traceability aspects of Europquip, especially for
15 export over there. They're all pretty similar. HAACP
16 more, probably a little more, towards -- leading towards
17 the agricultural side of it.

18 ADMINISTRATIVE LAW JUDGE: All right, just so
19 I'm clear on what the revision is comprised of, Mr. Roy,
20 would you look at the second paragraph...

21 MR. ROY: Yes.

22 ADMINISTRATIVE LAW JUDGE: ...and does it
23 identify three things that are not handling?

24 MR. ROY: Yes. In the first case, the
25 transfer of hops to another producer pursuant to 991.56

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1 A is basically the transferability among growers and
2 producers of -- has to do with the allotment, you know,
3 the allotment that might be available, a grower could
4 fill someone else's allotment or vice-versa or sell hops
5 to another one that has allotment. Number two, the
6 preparation of hops for market. That is the example I
7 used just recently about a grower that would palletize
8 or extract hops or somehow put them in form that would
9 be more stable, should not be considered handling. Or
10 the purchase of hops by a brewer. So in other words, if
11 a brewer...

12 ADMINISTRATIVE LAW JUDGE: Now, now this is
13 where I want to make sure I'm clear. So after the or,
14 this is a third way that...

15 MR. ROY: Yes.

16 ADMINISTRATIVE LAW JUDGE: ...is not handling?

17 MR. ROY: That's right.

18 ADMINISTRATIVE LAW JUDGE: So the or could be
19 an and. That those three things, all those three things
20 are not handling, is that correct?

21 MR. ROY: That's correct.

22 ADMINISTRATIVE LAW JUDGE: Okay. Now tell me
23 about that third one.

24 MR. ROY: The third one would be the example
25 of a brewer buying directly from a grower. In that

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1 case, the grower or producer would be the handler and so
2 the brewer would be exempt from the term -- or would not
3 be the handler.

4 ADMINISTRATIVE LAW JUDGE: So selling to a
5 brewer is handling...

6 MR. ROY: That's correct.

7 ADMINISTRATIVE LAW JUDGE: ...but the brewer
8 buying is not handling.

9 MR. ROY: The grower is the handler. Just so
10 I get it correct...

11 ADMINISTRATIVE LAW JUDGE: Okay.

12 MR. ROY: ...yeah. The grower would be the
13 handler in that particular case.

14 ADMINISTRATIVE LAW JUDGE: And it's to make
15 clear that a brewer is never the handler.

16 MR. ROY: That's correct.

17 ADMINISTRATIVE LAW JUDGE: All right. Thank
18 you. Mr. Monahan, additional questions for Mr. Roy on
19 this point?

20 MR. MONAHAN: No thanks, Your Honor.

21 ADMINISTRATIVE LAW JUDGE: All right. I'd
22 like to invite others who have questions or who want to
23 bring out impact of these changes. First, any on the
24 proponents side? Those who are here in a position
25 favorable to the marketing order? There are none. Now

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1 those who are here in a position against the marketing
2 order. Mr. Moody?

3 ★ ★ ★

4 BY MR. MOODY:

5 Q. Yes, Your Honor. Thank you. Getting
6 back to the consignment situation.

7 A. Yes.

8 Q. I'm a grower.

9 A. Yes.

10 Q. I have a hundred pounds of hops.

11 A. Yes.

12 Q. 60 pounds of allotment, 40 pounds of
13 reserve pool.

14 A. Yes.

15 O. I deliver all of that to Yakima Chief.

16 A. Which would partly be -- would be -- part
17 of it would be handling, you know, the...

18 Q. The 60 pounds would be handled...

19 A. Right.

20 Q. ...and the 40 pounds would be going
21 through reserve pool.

22 A. That's correct.

23 Q. Okay. So the -- it's the act that
24 triggers -- the handling occurs at the time of delivery
25 to Yakima Chief.

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1 A. That's correct.

2 Q. So the -- it's the physical movement of
3 hops, not the type of ownership change...

4 A. That's correct.

5 Q. ...that governs whether there's been...

6 A. In a consignment basis, yeah.

7 Q. ...handling?

8 A. Right.

9 ***

10 MR. MOODY: Okay. Thank you.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

12 Moody. Are there additional questions on this
13 particular provision from those who are here in a
14 position against the marketing order? Ah, we seem to
15 have hard copies. How many do you have, Ms. Brulotte?

16 MS. BRULOTTE: A whole stack of them.

17 ADMINISTRATIVE LAW JUDGE: A whole stack,
18 great.

19 DR. HINMAN: Your Honor, I think I have
20 possible one clarification on terminology. I'm not
21 terribly familiar with this, but it has to do food
22 manufacturing and other manufacturing, that's HACCP?

23 MR. ROY: Yes.

24 DR. HINMAN: I'm going to hazard a guess that
25 it's Hazard Analysis Critical Control Points or

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1 something to that effect.

2 MR. ROY: I would accept that.

3 DR. HINMAN: It's close enough.

4 MR. ROY: Okay.

5 ADMINISTRATIVE LAW JUDGE: Thank you. Thank
6 you, Dr. Hinman. Now, are there questions from USDA
7 representatives on this point?

8 MR. ROY: I get off that easy?

9 ADMINISTRATIVE LAW JUDGE: I think this is an
10 indication that this is a very good change.

11 MR. ROY: Thank you.

12 ADMINISTRATIVE LAW JUDGE: Clarifies a lot.

13 MR. MONAHAN: Your Honor, what I would propose
14 is that the hard copy be designated as the next
15 sequential exhibit with one change and that is somehow
16 in the copying the definition of foreign purchaser did
17 not receive its own independent...

18 MR. ROY: Oh.

19 MR. MONAHAN: ...subparagraph number.

20 MR. ROY: I think that's the way it was up
21 there, too, so...

22 MR. MONAHAN: Yeah.

23 ADMINISTRATIVE LAW JUDGE: All right, so at
24 the bottom paragraph should be number four?

25 MR. MONAHAN: Correct, Your Honor.

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1 ADMINISTRATIVE LAW JUDGE: All right. I'm
2 going to, on the record copy, put four period before the
3 quotation foreign purchaser, end quotation. Is there
4 any objection to the admission -- I've marked as Exhibit
5 5-3, 53. Is there any objection to the admission into
6 evidence of Exhibit 53? There is none. Exhibit 53 is
7 hereby admitted into evidence. I'm going to hand 53 and
8 a copy of it to the court reporter. The copy is for the
9 typist and also, I'm going to hand to the court reporter
10 Exhibit 52, which was rejected. I don't keep in the
11 record exhibits that were withdrawn. I do keep in the
12 record exhibits that are rejected. All right. Mr. Roy?

13 MR. ROY: Thank you.

14 ADMINISTRATIVE LAW JUDGE: You're welcome.
15 Mr. Monahan?

16 MR. MONAHAN: Thank you, Your Honor. The
17 proponents committee would call grower Reggie Brulotte.

18 ADMINISTRATIVE LAW JUDGE: Would you state
19 your full name and spell it for the record?

20 MS. BRULOTTE: Reggie Brulotte, R-e-g-g-i-e
21 B-r-u-l-o-t-t-e.

22 ADMINISTRATIVE LAW JUDGE: All right. You
23 remain sworn. I've been handed a copy of your statement
24 and I'd like for you to sign the record copy and I'll
25 hand it to you at this time. I'm going to mark that as

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1 Exhibit 5-4, Exhibit 54. Ms. Brulotte, you may proceed.

2 MS. BRULOTTE: Just for the record, I would be
3 half-French and I did not attend WSU. I was a chemistry
4 major at the University of Washington.

5 MR. ROY: I object.

6 MS. BRULOTTE: "As a sixth-generation farmer
7 in the Yakima Valley, I fully support the proposed hop
8 marketing order. Because of the German crop failure,
9 much of the inventory that has been held by growers has
10 been sold in the marketplace. Had there not been a crop
11 failure, our inventory would have been increase once
12 again and driven the bad prices of 2002 even lower from
13 .50 a pound to possibly .25 to .30 a pound. This,
14 however, does not mean that the supply and demand
15 balance we have been searching for has been achieved.
16 This is only one point in time and if everything stays
17 the same as this year, we will once again have too much
18 alpha on the world market next year. We have taken out
19 acreage over the last few years in response to dealers
20 and brewers saying there are too many hops being grown.
21 However, part of the reason we did so was because we
22 knew that a marketing order was being proposed. We
23 wanted to work with the hop industry, but it's been
24 frustrating to know that while you're taking acreage
25 out, others are exploiting that and adding additional

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1 acreage. Even though we reduced our acreage, we still
2 might need to purchase base depending where the saleable
3 is set. This is a cost we are willing to incur because
4 the marketing order would add value to the industry that
5 offsets the cost of purchasing base. Barrier to new
6 entries is also a concern that has been expressed.
7 There frankly aren't a lot of people clamoring to get
8 into the hop industry. The only bona-fide new grower
9 bought an existing ranch that already had production on
10 the farm. Having to buy a base is the least of the
11 worries for a new farmer if he wanted to start a hop
12 ranch. Establishing trellis, planting hops, purchasing
13 specialized field equipment, not to mention the million
14 dollars that you need to purchase the harvesting
15 facilities would provide a much greater barrier to new
16 entry. The market for aroma varieties keeps coming up
17 in testimony that it is balanced currently. Some people
18 have inferred that if the marketing order comes into
19 effect, that it would prompt people to switch to those
20 lower alpha producing varieties because you could grow
21 more acres. This -- people would just plant the aromas
22 now because they're at higher price. But in truth, most
23 growers don't just go out and plant aroma varieties
24 without them being contracted because of the high degree
25 of risk associated with those types of hops and a lack

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1 of alternative markets for them. They have such a
2 limited demand that even a few bales of overproduction
3 drastically reduces the market price. The order is also
4 designed to protect the balance that currently exists in
5 the aroma market. By inflating the base on those
6 varieties it was intended to protect the aroma growers
7 from having to cut that acreage. This is also why it's
8 felt important to include the years back to 1997 in base
9 allocation. Many Oregon growers who primarily produce
10 aroma varieties took cuts back then and should not have
11 to take another cut. Most growers agree that it's been
12 on the alpha side of the industry that has been out of
13 balance and felt that's where the cuts need to be taken.
14 World market share has been brought up at several
15 points. The feeling of a couple of economists seems to
16 be that we should keep our prices low to preserve that
17 market share. If we keep share market share if the
18 prices is below our cost of production, it would seem
19 logical that we should maybe give up some of that market
20 share and make a return on our investments. There seems
21 to be an idea being presented that there are several
22 places to market your hop production. I'd like to know
23 where all these dealer/handlers are. Of all the
24 handlers that have been named by the opposition, two
25 will only market hops from their members, primarily, the

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1 Yakima Chief and Hop Union, two large brewers, Coors and
2 Anheuser-Busch buy direct from the growers, and two
3 dealers, Haas and Steiner buy most of the rest of the
4 hops. Of all the rest of the dealers that have been
5 mentioned, few are familiar to me and only one has ever
6 bought hops from our ranch. I feel that a marketing
7 order will be an important factor in keeping the US hop
8 industry alive and viable due to the stabilization that
9 it can impart into our industry."

10 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
11 Brulotte. Is there anything else you'd like to add
12 before I invite questioning first from Mr. Monahan?

13 MS. BRULOTTE: No.

14 ADMINISTRATIVE LAW JUDGE: All right. Mr.
15 Monahan?

16 MR. MONAHAN: I have no questions, Your Honor.
17 Thank you.

18 ADMINISTRATIVE LAW JUDGE: All right. Are
19 there other people here in a position in favor of the
20 marketing order that have questions for Ms. Brulotte?
21 Are there any who are here in a position against the
22 marketing order that have questions for Ms. Brulotte?
23 Mr. Carswell?

24 ***

25 BY MR. CARSWELL:

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1 Q. Yes, Your Honor. Hi, Reggie. How are
2 you?

3 A. Just dandy, thanks.

4 Q. Okay. Forgive me, I just don't know all
5 the family relationships. You -- was that your dad that
6 testified yesterday?

7 A. Yes, it was.

8 Q. And is that -- are you the same operation
9 or do you have separate operations?

10 A. It would be one entity.

11 Q. One...

12 A. So hopefully, this isn't one grower, one
13 testimony.

14 Q. No, it's not. No, not at all. I was
15 looking at what you had said about the aroma varieties
16 and I just wanted to ask you about that a little bit.
17 The -- you say that most people -- or most growers don't
18 just go out and plant aroma varieties without them being
19 contracted because of the high degree of risk associated
20 with those types of hops. Isn't it risky to grow any
21 hops that you don't have a contract for?

22 A. Yes, but people seem to be willing to
23 grow alpha hops because there are more alternate markets
24 for them. You don't go out and plant a whole lot of
25 Willamettes just because you feel like growing

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1 Willamettes, if they're not contracted. There generally
2 is one buyer for them.

3 Q. Isn't it the problem, though, that folks
4 have gone out and grown hops that they don't have
5 contracts for, because that's created the excess supply?

6 A. Yeah, and that's what we're trying to
7 prevent from happening in the future.

8 Q. Right. So if every grower just grew or -
9 - you knew, grew for contract maybe plus a little bit,
10 you wouldn't have a problem, right?

11 A. So you're saying out of the goodness of
12 our heart everyone's supposed to not grow hops unless
13 they're contracted?

14 Q. No, I'm saying that if individual
15 businessmen don't want to incur risk by growing
16 something that they don't know they have a market for,
17 that they would either grow or not grow based on the
18 level of risk that they'd be willing to accept.

19 A. But that hasn't happened.

20 Q. As far as this year's production, do you
21 have any idea what that is?

22 A. No, I do not.

23 Q. Okay. Is it your understanding that
24 -- and I think your testimony reflects this, that some
25 growers have gone out and grown more this year than --

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1 as others have contracted?

2 A. I believe that has happened over the last
3 couple of years.

4 Q. Do you ascribe a bad motive for that? Do
5 you think it's related to the marketing order?

6 A. I'm not going to speak as to the actual
7 motivations of anybody, but that's what it feels like to
8 me.

9 Q. Could it be that they just had contracts
10 for those hops?

11 A. Like I said, I don't know everybody's
12 individual operation.

13 Q. Okay. The hops that you cut back on, did
14 you have contracts -- I would presume you wouldn't have
15 a contract for the hops that you cut back or you
16 wouldn't have -- or you would've grown them, is that
17 accurate?

18 A. We cut back on the hops and do not
19 pursue contracts for that acreage.

20 Q. And wouldn't you pursue contracts before
21 you planted the acreage? You would have a -- you would
22 normally have a contract on the acreage before you plant
23 it, right?

24 A. We didn't plant. We took some acreage
25 out and then we have the additional capacity to produce,

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1 but we decided not to go ahead and try and contract that
2 acreage out and just keep it out of production.

3 Q. Okay. You mention that many Oregon
4 growers who primarily produce aroma took cuts back in
5 '97 and that seems to be a justification for going back
6 to '97 to include that in the base allocation. I don't
7 understand that. Could you explain that?

8 A. When we were putting the order together,
9 the Oregon growers felt that it was important that
10 they'd be able to go back at least to '97 because they
11 took their cuts either in '97 or before then...

12 Q. Um-hum.

13 A. ...and they were concerned that they
14 would have to take -- since they had already taken out a
15 portion of their acreage, that they would have to take
16 out more acreage once again.

17 Q. But if the cut was in '97, that's not a
18 good year for them. If it was '97 or before, you know,
19 that cut acreage would be not a good for them because
20 they would have a lower base to work with by using '97,
21 so I don't see how the fact that Oregon growers took a
22 cut in '97 would be a reason to include '97 in the
23 allocation.

24 A. The Oregon growers felt that is was that
25 we spoke to.

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1 Q. Okay. On the market share point, you
2 know, that we -- you should keep your prices low to
3 preserve that market share, I guess I agree with you
4 because, you know, if -- again, if people only grew what
5 they had contracts for, you presumably grow less than
6 you are growing now, correct?

7 A. Presumably.

8 Q. And you'd probably lose some market share
9 by doing that, correct?

10 A. Possibly.

11 Q. But you probably overall get a better
12 price for your hops, correct?

13 A. Possibly.

14 ***

15 MR. CARSWELL: Okay. Thanks very much.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
17 Carswell. Mr. Moody?

18 ***

19 BY MR. MOODY:

20 Q. Thank you. Reggie, you're a good
21 businesswoman, right?

22 A. I try to be.

23 Q. Okay. You make the planting decision,
24 harvesting decisions with the expectation of making
25 money?

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1 A. That's the general idea.

2 Q. Great. And do you have both alpha and
3 aroma hops?

4 A. Yes.

5 Q. And you have other -- have you
6 diversified across other agricultural commodities, as
7 well?

8 A. We have a small amount of alfalfa.

9 Q. But most of your farm's livelihood
10 depends on hops?

11 A. Yes.

12 Q. Okay. But you diversified at least
13 across aromas and alphas.

14 A. Yes.

15 Q. Okay. Do you have contracts for your
16 aromas this year?

17 A. Yes.

18 Q. And would you generally agree with the
19 testimony that the aroma market has remained in balance
20 during the past several years?

21 A. I think in general, but I think that
22 there are a couple of varieties that are probably out of
23 balance as of this point in time.

24 Q. And are those growers making decisions
25 appropriate, meaning cutting production?

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1 A. I'm not going to say that they're
2 appropriate or not, it's been their choice.

3 Q. And is the -- do you agree with the
4 primary reason for the overproduction on the alpha side
5 is a combination of declining brewer demand and
6 dramatically increased productivity of the super high
7 acid varieties?

8 A. Those are probably two factors.

9 Q. Could you add any other significant
10 factors?

11 A. Not off the top of my head.

12 Q. Okay. You mentioned that some people
13 were -- I gather this year -- declining, you know,
14 reducing their production and some people are increasing
15 their production? Is that correct?

16 A. I believe so.

17 Q. And isn't that, I guess, to be expected
18 in a well-functioning market that -- like restaurants or
19 gas stations or convenience stores, that some people
20 will be going out and other people will be entering
21 the market?

22 A. Usually, though, the gas stations and
23 restaurants don't have, you know, a group saying that
24 yes, we are trying to reduce what -- the product that
25 we're purchasing and then the other people can take

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1 advantage of that.

2 Q. Well, wouldn't you expect that the people
3 entering the market and investing their valuable
4 resources and time have an expectation that they'll make
5 money from that decision?

6 A. How many people are entering the hop
7 industry?

8 Q. Well, I was referring to your testimony.
9 Entering or expanding.

10 A. What's the question?

11 Q. The question is wouldn't the people
12 entering or expanding, in your view, would it be their
13 expectation that they'll be making money from investing
14 those resources?

15 A. I think everyone's trying to make money.

16 Q. Right. Well, are they -- is it sort of
17 -- but your -- you and this hypothetical expanding
18 grower both looking at more or less the same information
19 and you're making a reduction and they're making an
20 increase, both of you expecting to make money from those
21 decisions. How can this be?

22 A. Well, I'd like to increase my production
23 as much as everybody else, but we've been trying to work
24 together as an industry to curb some of the oversupply.

25 Q. And did you offer to participate in the

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1 '01 and '02 alliance in the Washington set-aside
2 programs?

3 A. We did participate in the set-aside
4 program.

5 Q. Okay. And has, generally speaking, the
6 supply been adjusting in response to the market trends?

7 A. I think that the supply was adjusted more
8 due to the fact of the German crop failure than anything
9 else.

10 Q. Would you have any objection to using
11 more recent years for the base period, like '01, '02,
12 and '03, instead of going all the way back to '97?

13 A. Yes, I would.

14 Q. Are there producers who produced in '97
15 through '01 that are no longer commercially producing a
16 crop?

17 A. There could be.

18 Q. And is it your view that it's fair if
19 they get base?

20 A. No, I believe that we -- the '97 to '02
21 period is what's been proposed for quite a while. There
22 may need to be looked at some individual cases, however.

23 ***

24 MR. CARSWELL: Do you think you need to be a
25 commercial producer in '03 to be able to earn initial

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1 base?

2 MS. BRULOTTE: I think that depends on how
3 you're defining a commercial producer.

4 MR. CARSWELL: Well -- what do you think's the
5 right definition?

6 MS. BRULOTTE: I think that somebody that has
7 a hop farm, maybe not just produced or that has plants,
8 the facility and just decided to not harvest their crop
9 in '03 would probably still be a grower.

10 MR. CARSWELL: Okay. Thank you very much,
11 Reggie.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Moody. Are there any other questions for Ms. Brulotte?
14 Yes, Dr. Tweeten?

15 ***

16 BY DR. TWEETEN:

17 Q. I would like to ask about the value
18 allotments that would be given out. Won't this
19 constitute another significant barrier to entry into the
20 hop industry? The value that these allotments acquire
21 and the cost of purchasing them to expand or get into
22 production?

23 A. I believe that's been covered by several
24 people already, actually, and that it -- depending on
25 what base actually costs, it could be a very small

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1 barrier. But when you look at all the other barriers to
2 new entry, that's probably pretty insignificant compared
3 to some other costs.

4 Q. Isn't it possible that with significant
5 barriers to entry that in the nature of the industry,
6 sometimes expanding demand, contracting, supply changing
7 and so forth, that there might be periods of very
8 significant undersupply in the market in the future
9 because of these large barriers to entry?

10 ***

11 MR. MONAHAN: I'll object to that, Your Honor.
12 I think it mischaracterizes the testimony.

13 ADMINISTRATIVE LAW JUDGE: Thank you. The
14 objection is noted, but I'll allow Ms. Brulotte to
15 answer. Do you want him to repeat that?

16 MS. BRULOTTE: Yes. What was the actual
17 question?

18 MR. TWEETEN: Well, apparently, one of the
19 purposes of the marketing order is to align supply and
20 demand. Currently, there is an oversupply of some types
21 of hops, is that correct?

22 MS. BRULOTTE: Correct.

23 MR. BARTON: Can we take a break?

24 ADMINISTRATIVE LAW JUDGE: Oh, we need to
25 change the tape at 9:19.

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1 ***

2 [Off the Record]

3 [On the Record]

4 ***

5 ADMINISTRATIVE LAW JUDGE: We're back on
6 record at 9:20. Dr. Hinman, you may continue with
7 your...

8 DR. TWEETEN: Tweeten.

9 ADMINISTRATIVE LAW JUDGE: ...Dr. Tweeten.

10 ***

11 BY MR. TWEETEN:

12 Q. Currently, there is an oversupply of
13 certain types of hops so there -- this effort at
14 balancing is important, but oversupply isn't necessarily
15 a permanent phenomenon. Would you agree with that?

16 A. I know that ever since I got back onto
17 the hop ranch in '98 it seems to be pretty permanent to
18 me.

19 Q. Isn't it possible that with depreciation
20 of assets, with the significant barriers to entry into
21 the industry that there could be a situation where there
22 would be an undersupply of hops available?

23 A. How would barrier to new entry affect
24 that? I don't understand.

25 Q. As demand expands and the costs of

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1 entering the industry become large and perhaps with a
2 marketing order in effect limiting what can be produced,
3 there might be an under-investment in the industry and
4 one might end up with shortfalls to meet the demand.

5 A. I don't see how the marketing order
6 really affects that in any additional way that already
7 exists with just the current harvesting and the current
8 cultural practices of the US hop industry.

9 Q. You don't feel that the cost of acquiring
10 allotments would be a significant factor in -- entry
11 into the industry.

12 A. Not when you compare it with all the
13 other significant costs.

14 Q. You indicated that there is this
15 imbalance among varieties -- with the aroma varieties not
16 significant in oversupply, the high alpha varieties more
17 in oversupply. Will a marketing board be able to
18 correct these kinds of imbalances within the industry?

19 A. The whole reason that we've set up the
20 marketing order the way it is, is to allow growers to
21 choose which varieties they would like to -- most
22 growers will probably, in my opinion, grow the high-
23 priced aroma varieties that they have contracted for
24 first and use the allotment towards that.

25 Q. So was that answer a yes or a no to

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1 whether the marketing board will be able to correct the
2 imbalances within the industry?

3 A. That is the hope, yes.

4 ***

5 DR. TWEETEN: Thank you.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
7 Tweeten. Any other questions for Ms. Brulotte from
8 those who are here in a position against the marketing
9 order? There are none. I would invite questions from
10 neutral entities began with representatives from the
11 USDA.

12 MS. BRULOTTE: I even get gypped out of the
13 large and small question because Dad answered it.

14 ADMINISTRATIVE LAW JUDGE: Any other questions
15 for Ms. Brulotte from anyone? Is there any objection to
16 the admission into evidence of Exhibit 54, which is Ms.
17 Brulotte's statement? There is none. Exhibit 54 is
18 hereby admitted into evidence. Ms. Brulotte, do you
19 have an extra one for the typist?

20 MS. BRULOTTE: Yes, I do.

21 ADMINISTRATIVE LAW JUDGE: If you could give
22 that to the court reporter and would you present him,
23 also, with this record copy which bears your signature?
24 Thank you, Ms. Brulotte. Is there anything you'd like
25 to add before you step down?

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1 MS. BRULOTTE: No, Your Honor. Thank you.

2 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
3 Monahan?

4 MR. MONAHAN: Your Honor, the proponents call
5 Dale Gamache.

6 ADMINISTRATIVE LAW JUDGE: Dale Gamache, would
7 you please come forward, please, to the witness stand
8 and you may be seated.

9 MR. MONAHAN: Your Honor, I believe Mr.
10 Gamache has brought with him a number of exhibits that I
11 can distribute for him.

12 ADMINISTRATIVE LAW JUDGE: Thank you. Let's
13 go off record while we distribute those. I'm going to
14 mark his statement as Exhibit 55.

15 ***

16 [Off the Record]

17 [On the Record]

18 ***

19 ADMINISTRATIVE LAW JUDGE: We're back on
20 record at 9:25. Mr. Gamache, would you state and spell
21 your name, please?

22 MR. GAMACHE: Yes. My name is Dale Gamache.
23 First name D-a-l-e, last name G-a-m-a-c-h-e.

24 ADMINISTRATIVE LAW JUDGE: And your statement
25 is on the letterhead of Geoff Gamache Farms, Inc.?

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1 MR. GAMACHE: Yes, it is.

2 ADMINISTRATIVE LAW JUDGE: All right. I'd
3 like to swear you in. Would you raise your right hand,
4 please?

5 ***

6 [Witness sworn]

7 ***

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Gamache. Do you want to begin with the reading of your
10 statement?

11 MR. GAMACHE: Yes, please.

12 ADMINISTRATIVE LAW JUDGE: All right, you may
13 proceed.

14 MR. GAMACHE: "My name is Dale Gamache. My
15 reason for being here -- my reasons for being here are
16 because the family members of our farm believe that a
17 hop marketing order is good not only for our farm, but
18 the hop industry, as well, because we believe that an
19 HMO board will collectively read and understand the
20 market better than each of us individually and also
21 because we are a small family farm and would like our
22 voice to be heard, as well. Our family began farming in
23 the Moxee Valley in the late 1800s, beginning with my
24 great-grandfather, Charles Gamache, in 1897. My
25 grandfather, George Gamache, purchased his first

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1 property in 1910. That property was a planting of hops
2 and is still being farmed in hops today -- is being
3 farmed by B&T Gamache Farms. My father, Geoff,
4 beginning -- began his farming with -- my father, Geoff,
5 began farming with his father in 1933 at the age of 17.
6 In 1934 my recently married parents, Geoffrey and
7 Vivian, purchased their first tract of land and home.
8 This first purchase of 39.25 acres is where they began
9 raising cattle, chickens, pigs, and cultivating
10 potatoes, carrots, sugar beets, and of course, hops.
11 This was the first of many small purchases over the
12 years. This 101 year old main structure with as many
13 additions is what my wife and myself now call home.
14 Today, six generations and 106 years later, with my
15 brothers Lee and Gene, and my nephew, James Edward St.
16 Mary and his son, Benjamin, are now farming 900 acres.
17 Our acreage is down about a hundred acres from the high
18 of '97-'98 crop years. Over the years our farm has
19 diversified into apple production, a hauling business,
20 and very recently, into alfalfa production. Our hop
21 acreage and production over the years had increased
22 incrementally from -- until 1997 with only three small
23 declines in production. Those small declines were in
24 1983 and '84 with the failure of a handler that left us
25 100 percent uncontracted for that year, again in 1989,

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1 with the failure of a second handler that left us 45
2 percent uncontracted. We were able to recontract with
3 different handlers most of the acreage for those years.
4 In 1995, we cancelled a contract because of poor
5 yielding Tettnanger variety. And some of you growers
6 know my brother, Lee. He did not put up with low-
7 yielding varieties at all. During those last years with
8 the last -- during those years with the last HMO, our
9 farm had a steady growth with fair contracting. In '97,
10 our hop acreage and production made a large jump. This
11 was based upon two events. December 31, 1996, if
12 everybody remembers the snow load we had. It caused our
13 kiln to collapse. To justify a major reconstruction, we
14 knew we'd have to expand our acreage. It just so
15 happened, a hop producer approached us with his intent
16 to retire. We were able to agree and come to terms
17 very, very quickly. During the last HMO, we enjoyed the
18 ability to expand our acres with steady, increasing
19 demand along with increase of pricing on forward
20 contracting. Since 1998, our farm's forward contracting
21 has diminished to a level of 1965. On my hop acreage
22 history that I have presented, you will note that our
23 hop production in 1965 was from 141 acres. You will
24 also note our highest production from the years 1997 and
25 1998 was from 467 acres. Would you please also note

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1 that our hop production for 2003 was at the same level
2 as it was in 1965 -- 140 acres. These acres of
3 production every year from 1965 through 2003 were
4 entirely contracted with the exception of the 2001 crop,
5 which only 55 percent was contracted. We will not do
6 that again. The returns are not what we had hoped they
7 would be when we made the decision to grow those spot
8 hops. Any spot hops in our farm produced any other year
9 were from higher than anticipated production only. We
10 have enjoyed all of our acreage fully contracted until
11 1998. New pricing of alpha varieties has also
12 diminished to a point below our growing costs and offers
13 from handlers have been few. I feel this is a strong
14 indication alpha is overproduced and that a grower has a
15 very poor understanding of the soft alpha market. The
16 grower's understanding of the alpha market is so poor
17 they will keep producing alpha until the industry, as a
18 whole, dies. Pricing from brewer direct future
19 contracts still remain strong for us with good pricing.
20 I only wish brewer direct contracting were more of our
21 farm's total production. It is becoming increasingly
22 more difficult to prepare budgets, for securing
23 operational financing with the many of the unknowns of
24 what our farm will grow in hops or remove from
25 production temporarily or permanently and to plant or

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1 not to plant an alternate crop. Since the year 2000, we
2 on our farm have removed from production 90 acres
3 permanently. We have also not renewed leases for an
4 additional 50 acres and half of that trellis has been
5 removed permanently. We feel that we have done enough
6 and it's now time for those who have not removed alpha
7 from production to do so until the balance of supply and
8 demand is met. Let the record show that we on our farm
9 want one vote for common ownership of multiple entities
10 and that we strongly believe the representative base
11 period should be the production years from 1997 through
12 2001." Thank you very much.

13 ADMINISTRATIVE LAW JUDGE: Mr. Gamache, would
14 you walk us through the attachments?

15 MR. GAMACHE: We have a table and then a graph
16 that matches the table. And pretty much what the graph
17 shows is a steady increase in our acreage and production
18 with those small, little glitches that you have to
19 really throw out because that was not indicative of a
20 market. The market was steady, the prices were steadily
21 increasing, we had good times through the marketing
22 period. And the marketing period -- with those
23 contracts we had leaving the last HMO extended out for
24 five and six years. It was very good for our farm.
25 Since 1998, the decline, because of too much alpha on

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1 the market has drastically reduced our production.

2 ADMINISTRATIVE LAW JUDGE: On the chart some
3 of the letters are in -- numbers are in black and some
4 are in green and some are in red. What are the
5 significance -- what is the significance of the colors?

6 MR. GAMACHE: The numbers in green are an
7 increase in acreage and the numbers in red are decrease
8 in acreage.

9 ADMINISTRATIVE LAW JUDGE: It's very
10 thoughtfully prepared. Thank you. I'm going to ask you
11 to sign the first page of your statement, which is
12 Exhibit 55. Is there any objection to the admission
13 into evidence of Exhibit 55? There is none. Exhibit 55
14 is hereby admitted into evidence. I would now invite
15 questions for Mr. Gamache from those who are here in a
16 position in favor of the marketing order.

17 MR. MONAHAN: I have a couple of questions.

18 ADMINISTRATIVE LAW JUDGE: Mr. Monahan.

19 ***

20 DALE GAMACHE,
21 having first been duly sworn, according to the law,
22 testified as follows:

23 BY MR. MONAHAN:

24 Q. Thank you. Thank you, Mr. Gamache. Do I
25 understand your testimony that even in years, say 1999

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1 and 2000 where you were -- well, let's say 1999 -- at or
2 near your peak of acreage that your farms -- your family
3 farms were primarily contracted for full production?

4 A. Yes, they were.

5 Q. Okay. And so even though you were at
6 presumable record highs for acreage and alpha, the
7 purchasers on the market were able to offer contracts
8 that were acceptable to your family?

9 A. Up until that time in 1999, I believe, or
10 no -- the year 2000, we turned down a contract that was
11 below the cost of our production.

12 Q. Okay. Is it -- has it been your
13 observation that the amount of acceptable contracts
14 offered to your family farm has decreased since then?

15 A. Yes, they have.

16 Q. What is your opinion, experience, and
17 observation as to why the availability of contracts has
18 diminished in the last four years?

19 A. Well, we strongly believe the
20 overproduction of alpha has made the offers of alpha --
21 because we were growing the Nugget variety, which is
22 only a high alpha hop and very few acres of the super
23 alpha variety, which would've been more profitable.
24 Which would've been profitable at those prices. We
25 could not afford to do that. The overall effect to our

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1 farm was we couldn't accept contracts at that dollar
2 amount unless we changed varieties. But it was only a
3 break-even point, so we could not afford to change
4 varieties into the Columbus variety or the Zeus.

5 Q. Has the amount of inventory held not only
6 by growers, but by dealers and the amount of alpha hops
7 on the spot market, in your opinion, affected both the
8 quantity and amount of contracts that are made available
9 to your family farm?

10 A. I'm not sure about that. I believe so,
11 but than again, I'm not sure if that's why.

12 ***

13 MR. MONAHAN: That's all I have, Your Honor.
14 Thank you.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Monahan. Mr. Roy?

17 ***

18 BY MR. ROY:

19 Q. Sorry. First question, you are French,
20 aren't you?

21 A. Very French.

22 Q. Okay. Did you, Mr. Gamache, participate
23 in any of the set-aside programs in '01 or '02?

24 A. Yes, we did. We had already reduced our
25 acreage and I think some discussions I did have with the

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1 panel at that time told them that we had already given
2 quite and we would still give more.

3 Q. So you had already some in 2000 and then
4 you added some more in 2001 and 2002 or...

5 A. It...

6 ***

7 ADMINISTRATIVE LAW JUDGE: By added more, it's
8 confusing.

9 ***

10 BY MR. ROY:

11 Q. Okay, yeah. Subtracted more because you
12 reduced the acreage more.

13 A. Yes, we did.

14 Q. Would -- did you have a -- how did you
15 feel about those programs? I guess the question would
16 be did you feel those programs were successful or were
17 there problems with those programs?

18 A. I felt that they would have been
19 successful if they would've gotten off the ground and
20 worked like they were supposed to, but unfortunately,
21 that when we were taking out, there was [sic] growers
22 that were putting in.

23 ***

24 MR. ROY: Thank you, Mr. Gamache.

25 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.

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1 Are there other questions from those who are in a
2 position favorable to a marketing order? No. I would
3 now invite questions from those who are in a position
4 against the marketing order. Mr. Carswell?

5 ***

6 BY MR. CARSWELL:

7 Q. Good morning, Mr. Gamache.

8 A. Good morning.

9 Q. Matt Carswell, Anheuser-Busch. I don't
10 think you've been here the whole time, so I'll go ahead
11 and introduce myself, if I could. I notice in your
12 comments, or actually in the chart on page two, that you
13 had -- from 1965 to 1986, your farm had expanded by less
14 than a hundred acres. Right at a hundred acres, about
15 97 acres. Is that accurate?

16 A. Yes, that is.

17 Q. And then from '86 until '98, it pretty
18 much doubled -- almost doubled from 237 to 467. So you
19 had a lot expansion during that period, correct?

20 A. That is correct. We expanded by buying
21 out hop farms that wanted to go out of business or
22 retire.

23 Q. And part of that's explained by the fact
24 that you had to reinvest because of the kiln, where the
25 roof collapsed. Is that right?

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1 A. Yes, it is.

2 Q. I noticed in 2001, you mentioned that
3 your -- that you engaged in the set-aside program that
4 year and I also noticed in your comments that you were
5 only 55 percent contracted for that year. Does the --
6 were you 55 percent contracted with what was remaining
7 after you set aside, or were you 55 percent contracted
8 taking into account the acreage that you set aside?

9 A. For what year? 2001?

10 Q. For 2001.

11 A. For 2001 we were only about 50 percent
12 contracted and that was because we turned down an offer
13 to grow Nuggets below our growing cost.

14 Q. Right, and -- but you were -- with
15 respect to the -- do you count the set-aside acres in
16 the percentages there, or do you not? Were you 55
17 percent plus the acreage you set aside or were you just
18 50 percent contracted?

19 A. These are actual acres of production.

20 Q. Okay. So...

21 A. Set-aside would've been the -- any acres
22 that were not grown.

23 Q. Okay. And they would be included in the
24 50 percent that was not contracted?

25 A. That is correct.

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1 Q. Okay. If you had -- if you could've
2 gotten a good contract that year, would you have
3 participated in the set-aside program? If you had
4 gotten a contract where you would've made money?

5 A. Not if they're contracted, no.

6 Q. I'm sorry?

7 A. If they were contracted, we probably
8 would not have participated to that degree.

9 Q. In the set-aside program?

10 A. If they were profitable contracts, yes.

11 Q. Yes, sir. It makes sense for somebody,
12 if they've got a profitable contract to grow hops,
13 correct?

14 A. But if there's a profitable contract,
15 chances are you have an equal and stable supply and
16 demand.

17 Q. And it would be somebody expanding that
18 year if they had a profitable contract in doing so. It
19 would be proper, correct?

20 A. I don't know. I would guess so.

21 Q. Okay. You say at the bottom that "it is
22 now time for those who have not removed alpha from
23 production to do so until the balance in supply and
24 demand is met." Do you think somebody should have to
25 remove alpha if they're fully contracted with profitable

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1 contracts?

2 A. I would say no, but why are they signing
3 contracts the year they're growing the hops for .50 a
4 pound?

5 Q. And I agree with you, but I'm giving you
6 the -- an example of somebody who's fully contracted
7 with profitable contracts. Is it fair that they should
8 have to reduce production?

9 A. On which program? An HMO?

10 Q. Any program. Would it be fair?

11 A. As long as it's fair for everybody.

12 Q. If someone -- okay, thank you. At the
13 beginning, you said that the reason for you being here
14 was because "the family members of our farm believe that
15 a hop marketing order is good, not only for our farm,
16 but the hop industry as well because we believe that an
17 HMO board will collectively read and understand the
18 market better than each of us individually." Are you
19 aware that there could be a marketing order passed that
20 would do just that, that would research and you know,
21 conduct market research and provide the industry with
22 more information?

23 A. Yes.

24 Q. Yes. Would you support such an order
25 without the production limitations?

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1 A. No.

2 Q. So when you say here that you believe
3 that the HMO board will collectively read and understand
4 the market better, you would also agree that they will
5 make decisions, better decisions, than individual
6 growers would make within the industry, is that
7 accurate?

8 A. Yes. Because collectively, they would
9 have more knowledge at their hands than each one of us
10 individually. I'm not an -- I'm not very good at
11 reading markets and I know there are people in this
12 industry that are much better than I am.

13 Q. Yes, sir. So they'll make better
14 decisions than you would make?

15 A. Especially when there are -- sitting on a
16 panel of members where they can discuss the knowledge
17 they have at hand at the time.

18 Q. Do you think it also would be helpful
19 because they would have more power, they would be able
20 to regulate production as compared to you being able to
21 regulate the production of your fellow growers?

22 ***

23 MR. MONAHAN: Your Honor, I must object to the
24 term regulate production.

25 ***

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1 BY MR. CARSWELL:

2 Q. Regulate -- I'm sorry. Good point,
3 Brendan. Regulate the amount that can be sold in the
4 market. Would you -- do you think that that is a reason
5 why they would be more effective than you would be
6 because you can't regulate what your neighbor will sell?

7 A. No, I don't agree with that. I think
8 that this industry is so unique and so small that we
9 need somebody that can read -- a panel, a board that can
10 advise us all as growers. Because each of us -- each of
11 our farms are going to make decisions on varieties, what
12 we're going to grow and how many acres of those
13 varieties that we can process profitable on each farm.

14 Q. But you do realize that somebody could
15 process profitably a certain amount of acreage. They
16 may not be able to do so because the board will set a
17 limit...

18 A. That's correct.

19 Q. So they can -- they will have decision
20 making over the amount of hops that somebody can sell.

21 A. Yes.

22 Q. And you believe that's a good thing?

23 A. That is a good thing.

24 ***

25 MR. CARSWELL: Okay. Thank you very much.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Carswell. Mr. Moody?

3 ***

4 BY MR. MOODY:

5 Q. Geoff [sic], this is a really nice graph.
6 Thank you. It doesn't distinguish between alpha and
7 aromas, but I gather you had both types of hops during
8 this whole period?

9 A. No, we did not. The only year we had
10 alphas was the year 1995, I believe it was. '94 and '95
11 and we took them out in '95 after one year.

12 Q. Okay. So you've traditionally been and
13 plan to continue an aroma grower?

14 A. No, not aroma, in alpha. '95, when we
15 took out an aroma variety...

16 Q. Oh, you've been traditionally been an
17 alpha grower?

18 A. Alpha grower.

19 Q. Oh, I see. And right now everything you
20 grow is alpha?

21 A. Yes.

22 Q. Oh, okay. And up until '98 did you have
23 contracts for your alpha?

24 A. Yes.

25 Q. And do you agree with a lot of the

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1 testimony that's been here that the world oversupply of
2 alpha has been in part due to brewer declining demand
3 and increasing productivity of super high alpha
4 varieties?

5 A. Mostly increased productivity of super
6 alpha varieties.

7 Q. Okay, and is that just happening in the
8 US or is that happening in other grower regions, as
9 well?

10 A. That's mostly started here in the US and
11 now has moved into Germany.

12 Q. So it's kind of spreading?

13 A. Yes.

14 Q. Okay. Is one of your hopes for the
15 marketing order that it will force a return to
16 traditional forward contracting?

17 A. Yes, it is.

18 Q. Well -- and what about the problem that
19 since the marketing order can't control the oversupply
20 and the increasing shift to higher yielding varieties in
21 other world producing areas that by putting a cap on, in
22 effect, 25 percent or 30 percent of the world's alpha
23 production, you're still not going to achieve that goal
24 of forcing a return to forward contracts?

25 A. I'm not sure I quite understand how you

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1 put that question. I think what you're saying is how
2 can you have a price -- or how can you control the
3 levels of production?

4 Q. Well, your point...

5 ***

6 ADMINISTRATIVE LAW JUDGE: You did use the
7 word production, Mr. Moody, but what you're really
8 talking about is the global market?

9 MR. MOODY: Yes.

10 ADMINISTRATIVE LAW JUDGE: Would you explain
11 that?

12 ***

13 BY MR. MOODY:

14 Q. Sure. Geoff, your point was that the
15 marketing order needs to respond to overproduction in
16 alpha hops, right?

17 A. Yes.

18 Q. And if I asked you where is that
19 overproduction occurring, is like Washington or Oregon
20 or Germany, I guess you'd probably agree with me that
21 it's -- overproduction is worldwide?

22 A. Yes. The overproduction is worldwide.

23 Q. Okay. So if you get your neighbors to
24 share in this noble effort to reduce production here,
25 you're still leaving yourself vulnerable to all of the

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1 overproduction occurring elsewhere in the world.

2 ***

3 ADMINISTRATIVE LAW JUDGE: Mr. Moody, do you
4 want to reword that getting your neighbors to correct
5 the oversupply to the market, or...

6 MR. MOODY: Right. Well, while a marketing
7 order might get your neighbors in Washington, Oregon,
8 Idaho, and California to share in a plan to reduce
9 production of alpha acid, it's not going to do anything
10 about correcting the oversupply problem worldwide,
11 correct?

12 ADMINISTRATIVE LAW JUDGE: I'm still having a
13 problem with production as opposed to sale.

14 MR. MOODY: How about if we just use supply?

15 ADMINISTRATIVE LAW JUDGE: All right.

16 MR. MOODY: Okay.

17 MR. GAMACHE: Will it decrease supply? I
18 believe it would with the HMO board managing the surplus
19 to take care of problems that happen like this year with
20 the crop failure in Germany. There should always be a
21 supply on hand to take care of those crop failures.
22 This will help stabilize prices, help stabilize demand.

23 ***

24 BY MR. MOODY:

25 Q. Right, but isn't -- wouldn't you expect

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1 your colleagues in places like Germany and China to read
2 the bulletin and say ooh, those nice guys in the US are
3 cutting their production capacity -- just like you
4 complained that some people here had perhaps unfairly
5 increased their production in the last years. Would you
6 also your colleagues abroad to increase their production
7 as you reduce -- increase their supply as you reduce
8 yours?

9 A. I don't believe so because I feel that we
10 are much more resilient at bouncing back, we are more
11 efficient, and we can grow the hops -- a better hop
12 probably cheaper than anywhere else. The growing
13 districts are very unique to this hop.

14 Q. Right. And so alpha is -- we've had a
15 lot of testimony that alpha's pretty much alpha with
16 some preference for specific varieties. But there is a
17 true global market in alpha. Would you agree with that?

18 A. Yes.

19 Q. Okay. How can your effort to reduce the
20 supply here expect to succeed in the long run when you
21 can't control the supply produced in 60 or 70 percent of
22 the rest of the world.

23 A. We will continue to put a cheaper product
24 on the market, but hopefully it'll be more profitable
25 for us to do so. We'll always be able to grow the hop

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1 cheaper than Germany or France.

2 Q. Okay. Why are -- well then, why isn't
3 your share of the world market gradually climbing over
4 time?

5 A. I can't answer that. I don't know.

6 ***

7 MR. MOODY: Okay. Thanks very much.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Moody. Are there questions from -- Mr. Carswell? Well,
10 let me go first, if I may, to Dr. Tweeten. I'll come
11 back to you, Mr. Carswell.

12 ***

13 BY DR. TWEETEN:

14 Q. Mr. Gamache, Luther Tweeten. It seems to
15 me you've been making some desirable adjustments to the
16 market based on your record here. Don't you feel that
17 the individual hop grower is in a better position to
18 decide whether he or she wishes to compete in markets
19 than to have an eight-member committee decide what the
20 allotment is -- the saleable is going to be and make
21 that decision for all hop growers?

22 A. I really, truly believe an eight-member
23 committee would be much better from our farm and I think
24 as an industry as a whole.

25 Q. Are you aware that that's a rare case in
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1 the world? That is, there aren't very many enterprises
2 that are allocated by committees. Most of them are
3 allocated by individual farmers?

4 A. Yes, I am.

5 Q. But you feel that this is a unique case?

6 A. Yes, I do.

7 Q. And why, exactly, do you feel that it is
8 a unique case?

9 A. Because of the location. Hops can only
10 be grown in certain areas of the world efficiently.
11 Germany -- the areas of Germany and France where they're
12 growing them, Washington and Idaho and Oregon. And even
13 Oregon and Washington can't grow the same varieties
14 efficiently.

15 ***

16 DR. TWEETEN: All right. Thank you.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
18 Tweeten. Mr. Carswell?

19 ***

20 BY MR. CARSWELL:

21 Q. Just one more question, Mr. Gamache. You
22 mentioned that cost of production is lower in the US
23 than elsewhere in the world. Do you have any evidence
24 on that one, especially with respect to Germany?

25 A. I don't have any in my hand, no, but all
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1 the testimony from the Germans, when they come to visit
2 us, have given testimony that their subsidy programs
3 keep them in balance with our trade.

4 ***

5 MR. CARSWELL: All right. Thank you.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Carswell. Other questions for those -- from those who
8 are here in a position against the marketing order?
9 There are none. I would invite questions from
10 representatives of USDA. I'll start with Dr. Hinman.

11 DR. HINMAN: I'll let Ms. Finn start.

12 ADMINISTRATIVE LAW JUDGE: Ms. Finn?

13 ***

14 BY MS. FINN:

15 Q. Good morning. You said in your statement
16 that you do some direct contracting with brewers, is
17 that correct?

18 A. With one brewer, yes.

19 Q. And based on some of the -- things we've
20 heard here, you understand that in those situations you
21 would be classified as a handler?

22 A. Yes, I do.

23 Q. What impact do you think that will have
24 on you?

25 A. I believe, with the way it's set up now,
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1 the -- what I've read into the marketing order when it
2 was proposed, first proposed, if there's been no change
3 to that, that we would survive fine as we've already
4 taken enough acres out of production that if it did come
5 in and they use those years, we would be able to
6 increase our saleable and would still be fine even
7 though we're selling a few hops to a brewer.

8 Q. But as far as the reporting requirements
9 and paying of assessments on those hops and the added
10 responsibility of being a handler, would that be a
11 problem for you?

12 A. No, it would not.

13 ***

14 MS. FINN: Thank you.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
16 Finn. Dr. Hinman?

17 ***

18 BY DR. HINMAN:

19 Q. Yes, I'm going to ask you the small farm
20 question -- you've heard this discussion before?

21 A. Yes, I have.

22 Q. I gather from your acreage that at the
23 moment, you may be considered a farm in terms of hop --
24 sales of hop -- your hop acreage alone?

25 A. Yes.

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1 Q. And...

2 A. We are well below the 750,000.

3 Q. When you were at your high in previous
4 years...

5 A. We were well above it.

6 Q. And even currently, with your hop acreage
7 income being below that -- the small farm level, is --
8 are other agricultural crops -- would that put you
9 above, in total agricultural sales, above 750,000?

10 A. Yes, they would.

11 Q. Okay. Getting back to the -- you
12 characterize yourself only as a sort of small hop grower
13 at the moment. An issue we want to look at is in terms
14 of the compliance, you know, that would be required of
15 various members of the hops industry. Do you feel that,
16 as a -- in your viewpoint currently, as a small grower,
17 that the compliance costs would be just proportionately
18 more difficult for a small grower than a large grower,
19 or would they be proportionately equal, in your view?
20 There's no undue burden on just being a small grower.

21 A. I think they would be equal. I think
22 that we've handled quite a few of the business affairs
23 on our farm in a very efficient manner.

24 ***

25 DR. HINMAN: Okay. Thank you very much.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
2 Hinman. Other questions from USDA representatives? Ms.
3 Deskins?

4 ***

5 BY MS. DESKINS:

6 Q. I'm not sure if you've been here the
7 whole time. My name is Sharlene Deskins. I'm an
8 attorney with the Office of the General Counsel, USDA.
9 I have some questions for you about common ownership of
10 multiple entities?

11 A. Yes.

12 Q. What type of entities are you referring
13 to? Are there partnerships or how is it set up?

14 A. I believe that I'm talking about
15 partnerships, LLCs that may have been formed in the last
16 few years. As for ourselves, we have two entities.
17 Geoff Gamache Farms, Inc. was the one that was set up in
18 the '60s, or '70s, excuse me. And then we just
19 recently, in fact, a little over a year ago, set up
20 another one. It's called Blackstar Ranch, LLC, which is
21 now our operating company. And Geoff Gamache Farms,
22 Inc. is only our holding company that holds all the
23 assets.

24 Q. Okay, so Geoff Gamache, Inc. is a
25 corporation established under the laws of Washington

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1 state?

2 A. Yes, it is.

3 Q. Okay. And then also, how would you
4 define common ownership?

5 A. I would define common ownership as any
6 two, three, or four or five or how many entities that
7 have the same ownership, the same names on ownership
8 papers. The same that sign all the documents that go to
9 the bank.

10 Q. Would owning property jointly constitute
11 common ownership?

12 A. Yes, I believe so.

13 Q. What about working together on the same
14 property -- well, on property even though it's owned by
15 different entities?

16 A. I don't know how to answer that. I would
17 -- I believe that if the two property owners, if they
18 are sharing, let's say, a picking facility, then I would
19 say you would have two different ownerships.

20 ***

21 MS. DESKINS: Okay. Thank you.

22 ADMINISTRATIVE LAW JUDGE: Other questions
23 from neutral parties? Mr. Gamache, I'd like to inquire
24 further along the line Ms. Deskins was inquiring about.
25 How many different growers, separate independent growers

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1 are there that have the name Gamache or a part of your
2 family?

3 MR. GAMACHE: Probably about the industry in
4 the state of Washington is a Gamache.

5 ADMINISTRATIVE LAW JUDGE: Is that right?

6 MR. GAMACHE: There's the -- several Gamache
7 families down in the lower valley -- we're all related,
8 but we're all farming separately. And then you have the
9 two Gamache families in the Moxee Valley. My dad's
10 family and then my uncle Don's family.

11 ADMINISTRATIVE LAW JUDGE: What would be an
12 easy way, if there is one, for it to be determined what
13 is a separate grower and therefore entitled to a vote?

14 MR. GAMACHE: You would have to look at
15 ownership. Who are the common owners of each parcel, or
16 each business.

17 ADMINISTRATIVE LAW JUDGE: All right, thank
18 you. Anything -- any other questions for Mr. Gamache?
19 Mr. Carswell?

20 ***

21 BY MR. CARSWELL:

22 Q. When you talk about ownership, are you
23 think along the lines of ownership in the crop or the
24 land or what, exactly?

25 A. I would say ownership as a producer.

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1 Q. Of the crop?

2 A. Yes.

3 ***

4 MR. CARSWELL: Okay. Thanks.

5 ADMINISTRATIVE LAW JUDGE: Are there questions
6 for Mr. Gamache from anyone else? Mr. Gamache, is there
7 anything you'd like to add before you step down?

8 MR. GAMACHE: No. Thank you, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Thank you. Let's
10 go off record for just a moment at 10:01.

11 ***

12 [Off the Record]

13 [On the Record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: Oh, I was just
16 going to go back on the record. Is this a good time to
17 do that? Let's go back on record at 10:02. Mr.
18 Monahan, you let me know when it's time for a break, but
19 you're welcome to call another witness, if you'd like.

20 MR. MONAHAN: Thank you, Your Honor. Why
21 don't we take a break after Mr. Tobin's testimony?

22 ADMINISTRATIVE LAW JUDGE: All right.

23 MR. MONAHAN: Henry Tobin.

24 ADMINISTRATIVE LAW JUDGE: Mr. Tobin, if you
25 would come forward, please? Thank you. We are in the

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1 process of distributing Exhibit 5-6, 56, Henry J. Tobin.
2 Mr. Tobin, would you state and spell your name for the
3 record?

4 MR. TOBIN: My name is Henry J. Tobin,
5 H-e-n-r-y J. T-o-b-i-n.

6 ADMINISTRATIVE LAW JUDGE: All right. That
7 microphone is a bit far. Can you -- even if it's to the
8 side. Yes, that's going to be better, I think. Mr.
9 Tobin, if you'd raise your right hand, I'll swear you
10 in.

11 ***

12 [Witness sworn]

13 ***

14 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
15 Tobin, do you want to begin by reading your statement?

16 MR. TOBIN: If I could, I'd just as soon do it
17 that way.

18 ADMINISTRATIVE LAW JUDGE: All right. You may
19 proceed.

20 MR. TOBIN: "My name is Henry Tobin. I farm
21 in the Mabton area, which is in the lower valley, the
22 lower Yakima Valley. I am a fairly new hop grower, if
23 you consider the fact that I'm only a second-generation
24 grower."

25 ADMINISTRATIVE LAW JUDGE: Let me make sure
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1 the people in the back can hear you. Raise your hand if
2 you can hear him loud and clear. All right, good.
3 Thank you. You may proceed.

4 MR. TOBIN: "I have been involved in hop
5 production all my life and I've also been a producer
6 which operated both with and without the regulations of
7 the prior marketing order. I am in support of the
8 oversupply hop marketing order being proposed and am
9 convinced that these proposals will put stability and
10 profitability back in our marketing equation. It was
11 also -- I was also in support of the last marketing
12 order and served as an alternate for two terms. We
13 would be classified as a small grower in this industry
14 with production of high alpha varieties. The last two
15 years have left -- I have left a hundred percent of our
16 yards idle and taken down some trellis with supplies
17 being saved to be used at a later date when marketing
18 conditions improve. I would also like to confirm
19 testimony presented earlier that both separate entities
20 of which I am involved in acquired one bale of hops each
21 to try and preserve my voting rights. My voting right
22 is very important to me and I feel it would be an
23 injustice if I were denied that right. The '01 year, in
24 my judgment, should be the year used for the criteria
25 for voting rights. It is my opinion this is the last

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1 year that you could say very few games were played by
2 growers to improve their personal situation regarding
3 the marketing order. With this point in mind, I'd also
4 recommend and prefer the Department use the years '97
5 through 2002 in allocating allotment base for the
6 marketing order. In conclusion, I'd like to say that
7 I'm very disappointed in the industry -- that the
8 industry could not control their own destiny through
9 voluntary -- excuse the spelling on that -- methods, but
10 by making mandatory regulations, everyone would be
11 placed on a more even playing field and maybe we could
12 all get back to farming. Collectively, I feel we have
13 -- we will have a say in our own destiny, independently
14 or likely to be part of the endangered species."

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Tobin. Is there anything you'd like to add before I
17 open for questions?

18 MR. TOBIN: No.

19 ADMINISTRATIVE LAW JUDGE: All right,
20 questions. Mr. Monahan?

21 MR. MONAHAN: I have no questions, Your Honor.
22 Thank you.

23 ADMINISTRATIVE LAW JUDGE: All right. Any
24 questions from anyone else? Mr. Roy?

25 ***

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1
2 BY MR. ROY: I guess I could start with a
3 standard question, but you are French, right?

4 MR. TOBIN: Yes.

5 MR. ROY: Okay. Then could you describe your
6 participation in the 2001 and then the 2002 set-aside?

7 MR. TOBIN: I was on board on the alliance
8 group participation. I participated in that. And in
9 2002 on the set-aside program, or -- I don't remember
10 the years, but I was also in the set-aside program.

11 MR. ROY: Did you have -- actual stringing
12 hops in 2001, then?

13 MR. TOBIN: Yes.

14 MR. ROY: So in 2002 you were -- did you
15 string hops in 2002?

16 MR. TOBIN: No.

17 MR. ROY: So you were 100 percent unstrung in
18 2002?

19 MR. TOBIN: That's correct.

20 MR. ROY: Okay, thank you.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.
22 Any other questions from those in a position in favor of
23 a marketing order? No? Questions from those who are in
24 a position against a marketing order? Mr. Carswell?

25 ***

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1 HENRY J. TOBIN,
2 having first been duly sworn, according to the law,
3 testified as follows:

4 BY MR. CARSWELL:

5 Q. Good morning, Mr. Tobin.

6 A. Good morning.

7 Q. The last two years you left your yards
8 idled and -- was that part of participating in the set-
9 aside, sir?

10 A. Early on, I would have to say that it
11 kind of fell into that category.

12 Q. And did you have any of that -- any of
13 your potential crop under contract at that time?

14 A. In 2001 I did.

15 Q. So you didn't grow some hops even though
16 you had a contract for them?

17 A. Correct.

18 Q. Why did you do that?

19 A. Because I felt the industry needed
20 everybody to participate -- that period of time in 2001
21 was a voluntary type of agreement, that growers agreed
22 to that they would try and eliminate -- I believe it was
23 around eight percent of the production on the alpha
24 side...

25 Q. Yes, sir.

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1 A. ...to alleviate some of the oversupply
2 situation and that's what I tried to do at that time and
3 I didn't necessarily leave blocks of hops out. As being
4 a small grower, 20 acres would be 25 percent of my
5 production. They were only after eight percent. So in
6 the process of doing that, we twined in a different way,
7 eliminated anchors, eliminated extra rows, to come up
8 with that reduction.

9 Q. But -- so you had a contract for hops in
10 2001, but you didn't grow any hops?

11 A. 2001 I did grow hops.

12 Q. Oh, you did grow hops? I'm sorry. But
13 -- so it was 2002, 2003 that you left your...

14 A. That is correct.

15 Q. I'm very sorry. I was thinking 2001,
16 2002. So in 2001 you had some contracts and you grew
17 hops. Did you have any contracts in 2002 and 2003?

18 A. No, I did not.

19 Q. And so when you talk about the voluntary
20 effort of 2002, if you had had a contract to grow hops,
21 would you have grown hops in 2002?

22 A. I probably would've grown some of my
23 hops, but not all of them.

24 Q. If you had been able to grow a hundred
25 percent of your hops, if you had a good contract --

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1 profitable contract, would you have grown those hops?

2 A. Not all of them.

3 Q. Okay. If somebody did have contracts for
4 those -- for the full amount of their production, would
5 it be reasonable for them to grow those hops if they had
6 a contractual obligation to meet?

7 A. Well, we're kind of in a Catch-22
8 situation here. I do not believe in cutting across
9 contracts, but in turn, I also believe that you have to
10 be responsible in your marketing as an industry, to try
11 and hold it together and without responsible marketing
12 on the supply side, my feeling is that the industry is
13 doomed.

14 ***

15 MR. CARSWELL: Thank you, Mr. Tobin.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
17 Carswell. Mr. Moody?

18 ***

19 BY MR. MOODY:

20 Q. Mr. Tobin, thank you. Were the hops you
21 were growing aroma or alpha?

22 A. I stated in my testimony that I'm mainly
23 alpha producer.

24 Q. Okay, and before this oversupply period,
25 did you generally have contracts for your alpha?

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1 A. I didn't produce any aromas.

2 Q. No, did you have contracts for your alpha
3 hops before the 2000-2001 period?

4 A. Yes, I did.

5 Q. Do you think the marketing order will
6 help bring a return for contracts for alpha?

7 A. In the long haul I do believe that, yes.

8 Q. For the production you idled and -- well,
9 generally are you a diversified farmer? Do you have
10 other crops you grow?

11 A. Yes, I do.

12 Q. What kinds of crops?

13 A. Grapes and alfalfa.

14 Q. Are hops -- about what percent are hops
15 of your farm?

16 A. Well, up until the last two years it was
17 one-third, one-third, one-third.

18 Q. Okay, and of the acreage you've idled,
19 have you shifted it to another crop?

20 A. No, we really haven't. And matter of
21 fact, part of the acreage that we have idled has been
22 sold.

23 Q. Okay. And did you plan on leaving the
24 remaining idled acreage idle until you can get back into
25 hops or do you plan on switching to another commodity?

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1 A. The trellises are still up and we're
2 still maintaining the root stock on the anticipation of
3 contracting a percentage of it down the road.

4 ***

5 MR. MOODY: Okay. Thanks very much, Mr.
6 Tobin.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Moody. Are there any other questions from those who are
9 here in a position against a marketing order? There are
10 none. Questions from neutral parties? Let's begin with
11 USDA. Ms. Finn?

12 ***

13 BY MS. FINN:

14 Q. Thank you. Did you say that you were
15 planning to grow hops in 2004?

16 A. I haven't decided that yet.

17 Q. So you don't know exactly when you're
18 going to start actual production again?

19 A. It depends on the supply side as far as
20 the alpha production and I think the situation that
21 happened in Europe this year, in my opinion, was just a
22 blurb in the market, you might say. It's not a -- not
23 something that's going to happen year after year, and so
24 what I see with US production, if it stayed constant,
25 and European production comes back into alignment with

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1 what they normally produce, we are not going to improve
2 our situation as far as the world market unless we send
3 a message to Europe that we are going to try and do a
4 little better responsible job in marketing -- or in
5 controlling our surpluses, because you can't expect
6 Europe, in my opinion, to change their marketing
7 policies if we're not going to change ours. And
8 therefore, I feel that the marketing order has some
9 definite advantages, not only for us, but for the world
10 hop industry.

11 Q. Is there a possibility that you may
12 decide not to grow hops again or do you plan to in the
13 future?

14 A. I'd like to say at this point in time
15 that I'd like to continue growing hops. To say that I
16 will, I really can't at this time.

17 ***

18 MS. FINN: Thank you.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
20 Finn. Go ahead. Mr. Tobin, did you want to say
21 something else?

22 MR. TOBIN: No, I'm just waiting for his
23 question.

24 ADMINISTRATIVE LAW JUDGE: Dr. Hinman?

25 ***

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1 BY DR. HINMAN:

2 Q. I appreciate the fact in your statement
3 you did classify yourself and you anticipated this
4 question for which I am now become infamous at this
5 hearing, but I'm not going let you off quite yet. I do
6 want to ask, are you -- you say you're a small grower.
7 I assume you're -- just in terms of hops, that would be
8 the years leading up to -- the few years leading up to
9 when you idled them altogether, even in the years just
10 prior when you did have production, that total
11 production sales value in those years was below
12 \$750,000?

13 A. On the hop side.

14 Q. Only on hops?

15 A. Yeah.

16 Q. Okay. And from all agricultural products
17 sold from your farm would be above or below that figure?

18 A. I'd say it was below.

19 Q. Below in terms of all farmed products?

20 A. Um-hum.

21 ***

22 DR. HINMAN: Okay. Thank you very much.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.

24 Hinman. Other questions from USDA representatives? Ms.
25 Deskins?

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1

2

BY MS. DESKINS:

3

Q. Mr. Tobin, I'm looking at your statement.

4

You also refer to having separate entities. I'm just

5

trying to find out, are those corporations or

6

partnerships or business names?

7

A. It's more of -- can you hear me?

8

Q. Yes.

9

A. It's more of a situation of taking over

10

and managing my mother's farm.

11

Q. Okay.

12

A. And in -- I started doing that in 1971

13

and that is also farmed -- by the way, we tore the

14

trellis down and sold -- the other entity is a personal

15

entity of my wife and I and our family and they were

16

farmed the last 30 to 40 years as separate entities.

17

And if that presents a problem within the industry as

18

far as the voting right, I am clearly flexible in that

19

respect.

20

Q. Well, if you said your mother owns one

21

farm and you own the other, would you see your mother as

22

having a vote and then you and your wife as having a

23

vote?

24

A. Well no, I don't see my wife -- my wife

25

and I are one.

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1 Q. I mean the partnership. You and your
2 wife having one vote and then you said your mother has a
3 farm, she would have one vote?

4 A. Well, not necessarily because I was under
5 the impression from what I've been hearing that people
6 are having a problem with all these entities and I can
7 understand and appreciate their feelings in this and my
8 feeling is that I've actually farmed both entities
9 separately with separate ID numbers and tax numbers and
10 checking accounts, bank accounts. Everything was held
11 separate. My mother should be entitled to a vote, but I
12 have been making all the decisions on that property for
13 the last 30 years and if it comes down to the fact that
14 we've got to say yay or nay on it, I'm going to be the
15 one that's going to be voting for both parties because I
16 do have power of attorney for my mother and if that's
17 going to present a problem, let me have one.

18 Q. Okay. And also, you said that -- I think
19 I understood this -- you've idled acreage now for 2002
20 and 2003?

21 A. Yes.

22 Q. And in learning about the hop industry,
23 when you said you've idled acreage, you still have hop
24 plants on the ground? They're just not strung?

25 A. In the entity of my mother and myself,

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1 those hops have been taken out, trellis taken down, and
2 property sold. And my own situation, those trellises
3 are still intact, we're still irrigating them,
4 minimizing the inputs as far as spraying and maintaining
5 the root stock for future production.

6 Q. Okay. So in terms of voting, you think
7 if someone has maintained the hop plant and the acreage,
8 they're entitled to a vote? Even if they haven't
9 produced any hops that year?

10 A. I definitely feel that way and am very
11 much using the 2003 production year alone as the voting
12 right year. There's -- I'm not alone in this. There's
13 [sic] other growers that have left a hundred percent of
14 their acreage out and their still bona-fide growers,
15 larger growers than myself, but if they lost that right
16 to vote, it's an injustice. There's no question.

17 ***

18 MS. DESKINS: Thank you.

19 ADMINISTRATIVE LAW JUDGE: Mr. Tobin, I'd like
20 to follow up. You believe the ownership of your
21 mother's farm is separate from your ownership of yours
22 and your wife's property, is that correct?

23 MR. TOBIN: That is correct. It definitely
24 is.

25 ADMINISTRATIVE LAW JUDGE: All right. So if
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1 the decision is made based on ownership, then your
2 mother's property would be entitled to one vote and your
3 property would be entitled to a separate vote.

4 MR. TOBIN: That is correct. But...

5 ADMINISTRATIVE LAW JUDGE: But what you're
6 saying is you're willing to sacrifice, if necessary, to
7 get to a one grower, one vote position?

8 MR. TOBIN: Yeah, because what it is, is the
9 two operations were farmed with common equipment, common
10 employers -- they were more or less farmed together, but
11 everything was kept track separately and granted, there
12 was [sic] two separate entities, but there was still one
13 management side of it and what was normally done on one
14 piece of property was also done on the other piece of
15 property and the only thing that has changed in the last
16 year -- well, a year ago at this date we, as a family,
17 not a personal family, but siblings, we decided that we
18 had to do something to minimize the cost that my
19 mother's side of the entities was having to incur for
20 maintenance and needless to say, she's 92 years old and
21 requiring an awful lot of care and so with that in mind,
22 we decided to sell the property.

23 ADMINISTRATIVE LAW JUDGE: And it was sold in
24 2002?

25 MR. TOBIN: Yes.

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1 ADMINISTRATIVE LAW JUDGE: Was the entire farm
2 sold in 2002? Your mother's entire farm?

3 MR. TOBIN: Yes. It was a 40-acre parcel.

4 ADMINISTRATIVE LAW JUDGE: All right. Thank
5 you. Anything further, Mr. Tobin? Oh, Dr. Hinman?

6 ***

7 BY DR. HINMAN:

8 Q. Yes. There was a second part of the
9 question I neglected to ask that I've asked of Mr.
10 Gamache and others. If you would -- assume a marketing
11 order was in place and if you would consider yourself
12 likely to be perhaps a small grower at the outset, would
13 you feel that the compliance cost would in any way
14 disproportionately fall on a small grower versus a large
15 grower, would they be -- would you feel any undue burden
16 as a small grower in terms of complying with the order?

17 A. I think farmers as a whole are pretty
18 well used to regulations and paperwork. I, myself,
19 became a farmer to farm and it's kind of turned into
20 more of an accounting-type business to where I spend
21 more time in the office than I do in the field and I
22 will agree that I am not looking forward to the
23 additional paperwork, but I don't think it's an unduly
24 problem.

25 ***

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1 DR. HINMAN: Okay. Thank you.

2 ADMINISTRATIVE LAW JUDGE: Mr. Broadbent?

3 ***

4 BY MR. BROADBENT:

5 Q. I have a bad track record, but hopefully
6 I won't screw this up. To further complicate the entity
7 one grower, one vote, how many grower numbers do you
8 deliver hops under?

9 A. Two.

10 ***

11 MR. BROADBENT: Thank you.

12 MR. TOBIN: Can I...

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. --
14 yes, you may elaborate, Mr. Tobin.

15 MR. TOBIN: I said two numbers. One for each
16 entity. Did I -- okay.

17 ADMINISTRATIVE LAW JUDGE: Are there any other
18 questions from USDA representatives? No. Are there any
19 other questions from anyone? Mr. Tobin, I'd like you to
20 sign your statement that I've marked as Exhibit 56. Is
21 there any objection to the admission into evidence of
22 Exhibit 56? There is none. Exhibit 56 is hereby
23 admitted into evidence. Thank you, Mr. Tobin. Let's
24 take a 15 minute break...

25 MR. TOBIN: Can I say one more thing?

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1 ADMINISTRATIVE LAW JUDGE: Oh, yes, Mr. Tobin.
2 Go ahead.

3 MR. TOBIN: Something that was brought out in
4 earlier testimony that, you know, of growers that worked
5 under the other marketing order and there was some
6 questions that were asked about the barriers to entry.
7 Under the other marketing order I actually entered the
8 industry twice. Purchased farms with base and proceeded
9 from that point on. In 1971 we entered, as a moderate-
10 sized grower at that time and bought an individual's
11 property and base and made it work. It was a
12 partnership arrangement. The partnership was split. It
13 was also accomplished again in 1978. Am I right on
14 that? Yeah. So not to say that there wasn't added
15 expense, but it is achievable. And there's testimony
16 that people have grown through the hop -- or, the old
17 marketing order and that is exactly what happened. We
18 grew throughout the marketing order and it was from the
19 stable conditions -- I mean, we had our ups and downs
20 throughout the marketing order, but it was still a lot
21 more stable than what we're seeing now. And that's...

22 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
23 Tobin. Are there any questions on that point? All
24 right, there are none. Please be back and ready to go
25 at 10:45.

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1 ***

2 [Off the Record]

3 [On the Record]

4 ***

5 ADMINISTRATIVE LAW JUDGE: All right, we're
6 back record now at 10:46. Mr. Monahan, you may resume.

7 MR. MONAHAN: Thank you, Your Honor. Of the
8 four farmers in favor of the marketing order that we
9 have yet to call, only one is here so far and with a --
10 if Your Honor would indulge a slight deviation from our
11 proposed schedule, I would like to call Mr. Carpenter
12 offer some testimony regarding the progress the parties
13 have made in how the referendum should be handled.

14 ADMINISTRATIVE LAW JUDGE: Good, Thank you.
15 Mr. Carpenter? Mr. Carpenter, if you'll pull that mike
16 a little closer to you and state your full name and
17 spell it for us.

18 MR. CARPENTER: My name is Stephen Carpenter,
19 S-t-e-p-h-e-n C-a-r-p-e-n-t-e-r.

20 ADMINISTRATIVE LAW JUDGE: Thank you. The day
21 you were actually sworn was the first day of our
22 hearing, 15 October, 2003. You remain sworn.

23 MR. CARPENTER: It seems like about a month
24 ago.

25 ADMINISTRATIVE LAW JUDGE: I understand. You
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1 may proceed, Mr. Carpenter.

2 MR. CARPENTER: Thank you, Your Honor. You
3 know, this issue of referendum and who should vote and
4 who shouldn't vote has come up several times, starting
5 the first day and probably with a certain degree of
6 consternation from our attorneys, a couple of us got
7 together on both sides of this particular issue and
8 thought it might be helpful to the Department if we
9 could put together a list of growers utilizing the one
10 grower, one vote theme that's been prevalent on both
11 sides throughout these proceedings. So we've done that
12 and we've also taken some time to go back to the code of
13 federal regulations that speak to the issue of voting
14 for marketing order referenda. And under 900.402, it
15 says that in Section A, each person who is a producer as
16 defined in this sub-part at the time of the referendum
17 and who also was a producer during the representative
18 period shall be entitled to only one vote in the
19 referendum. And so our thought was it would be pretty
20 tough for either side to certify that a grower is a
21 producer at the time of the referendum when first of
22 all, we're not sure whether we're going to be granted a
23 referendum and second, we won't know the date of that
24 until that decision's been made. So to be as helpful as
25 possible, we have put together a list of, I believe, 33

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1 growers from Oregon, 54 growers from Washington, and
2 five growers from Idaho with the caveat that the
3 opposition was going to check with Idaho. They thought
4 there was a potential there might be one more grower
5 down there. And this, at least, gives the Department a
6 list of the universe, if you will, of potential
7 producers on a one grower, one vote basis. And
8 hopefully, it'll be helpful to the Department in terms
9 of at least sending out ballots.

10 ***

11 STEPHEN CARPENTER,
12 having first been duly sworn, according to the law,
13 testified as follows:

14 BY MR. MONAHAN:

15 Q. Mr. Carpenter, I have an advantage over
16 the USDA at the moment because I've taken a sneak peek
17 at the document we will asked to be marked as an
18 exhibit. When that is passed around, there are a half a
19 dozen names that bear an X in the column to the right.
20 Can you please describe what that indicates?

21 A. That's correct. There are -- obviously,
22 it goes back to the definitions of a producer. There
23 are some growers who, one side or the other, would have
24 a question as to whether or not they are a producers and
25 we gave this some thought and some discussion between

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1 both sides of the issue and we felt it would be unfair
2 to -- for the proponents committee or the opposition
3 group to be able to certify one way or another whether
4 or not a grower was a producer. They're going to have
5 to do that on their own and they're going to have to do
6 it according to the regulation at the time of the
7 referendum. So for us to say a grower, for example, who
8 has been maintaining his hop yard and keeping the hop
9 plants alive for a couple years is not going to be
10 stringing hops and growing them at the time of the
11 referendum. We really can't say that, but the X's on
12 the right would indicate growers that one side or the
13 other feels are probably not a producer at this point.
14 Again, the idea is to be as helpful as we can to the
15 Department. I think both sides feel -- and I don't want
16 to represent, you know, official position of the
17 opposition. Perhaps they could do that later, but I
18 think both sides feels this represents the universe of
19 growers on a one vote, one grower basis and also
20 represents the universe of production. I think we have
21 to remember that the vote will be done on a production
22 basis and a grower basis, as well, and I'm pretty sure
23 we've done a good job of identifying total harvested
24 production.

25 Q. Mr. Carpenter, I didn't write down the
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1 numbers, but does that sound like about 93 or 94 total
2 growers?

3 A. Yeah, 92 or 93 depending on what the
4 oppositions finds out from the Idaho folks.

5 Q. And of the 92 or 93 growers that the
6 parties have collectively identified, how many is there
7 a question about in terms of whether they should or
8 should not have a vote in any prospective referendum?

9 A. I -- six. Half a dozen.

10 Q. Thank you, Mr. Carpenter. Do we have
11 copies of the list that you prepared, sir?

12 A. Yes, we do.

13 ***

14 MR. MONAHAN: Okay. I would ask, Your Honor,
15 that we mark the document that Mr. Carpenter's prepared
16 as the next sequentially numbered exhibit and I will
17 distribute it.

18 ADMINISTRATIVE LAW JUDGE: Thank you. This
19 will be #5-7, 57.

20 MR. MONAHAN: Your Honor, I guess I have one
21 more question for you. We have three sheets of paper on
22 Exhibit #...

23 ADMINISTRATIVE LAW JUDGE: 5-7.

24 MR. MONAHAN: ...57 with no grower names from
25 California, is that right?

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1 MR. CARPENTER: That's correct. It's the
2 general belief, I think, of the industry that there
3 might be a couple of small breweries that are growing
4 some hops, Sierra Nevada -- I think Anchor Steam [ph]
5 might be growing a small acreage, but...

6 MR. MONAHAN: You don't have enough
7 information to put their names on the list?

8 MR. CARPENTER: That's correct.

9 MR. MONAHAN: Okay. Thank you.

10 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, do you
11 have any extra copies of the list? I'd take one to be
12 the record copy. Thank you. And is this something that
13 can also be distributed to people who are in the
14 audience?

15 MR. MONAHAN: Sure.

16 ADMINISTRATIVE LAW JUDGE: If you distribute
17 them as far as they'll go, please. And we'll go off
18 record as 10:56.

19 ***

20 [Off the Record]

21 [On the Record]

22 ***

23 ADMINISTRATIVE LAW JUDGE: We're back on the
24 record at 10:56. Mr. Monahan?

25 ***

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1 BY MR. MONAHAN:

2 Q. I guess the last question I would ask is
3 whether the parties conferred with representatives from
4 Oregon in their efforts to create the list?

5 A. Yes, we did. We've had a couple of
6 growers up from Oregon over the past couple days and
7 believe both sides conferred with John Annen, Paul
8 Sears, and it's interesting that in -- I believe in John
9 Annen's testimony that was -- written testimony entered
10 yesterday from Michele Polasios [ph] from the Oregon Hop
11 Commission, their number of growers matches with our
12 list, as well.

13 ***

14 ADMINISTRATIVE LAW JUDGE: Thank you.
15 Anything further, Mr. Monahan, before I turn to other
16 counsel who are here to determine their position?

17 MR. MONAHAN: No thank you, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right. Who
19 else would like to acquaint me with their position on
20 the list. What's been marked as Exhibit 5-7, 57. Mr.
21 Carswell?

22 MR. CARSWELL: I was wanting -- maybe I should
23 wait. I can't tell you until I ask some questions about
24 the list, if I could, Your Honor. Is that okay, or...

25 ADMINISTRATIVE LAW JUDGE: Yes.

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BY MR. CARSWELL:

Q. Okay, thank you. Mr. Carpenter, I'm just going to go over the ones where there seem to be some question and just ask you what your knowledge is of the issue with respect to those growers, if that's okay?

A. That's fine.

Q. With respect to Mr. Terry Kirk, or Ms. Terry Kirk [ph], what is the issue on that one?

A. We talked to a couple of the Oregon growers and they were not sure whether or not he produced hops last year. Evidently, Mr. Kirk is working for a fertilizer company and there was some question as to whether he actually grew hops in last year. Again, we feel -- I think both sides feel he deserves a ballot because he certainly meets the second criteria in that he was a producer during the representative period, but it'll be up to him whether or not certify to whether he's a producer at the time of the referendum.

Q. And is the same issue for Mr. Brulotte, Lyle Brulotte?

A. I think it's the same general issue for each of the growers that have an X beside their name. One side or the other had a question about whether they

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1 produced hops in 2003 and thought it best that we leave
2 it up to the individual growers to determine whether or
3 not they were -- are producers at the time of a
4 potential referendum.

5 Q. So there's -- that's the issue, you said,
6 generally with all of them. Is that the issue with all
7 of them?

8 A. Yes.

9 Q. So there's no issue with respect to
10 common ownership or all those issues have been resolved,
11 do you think?

12 A. I think they've been resolved to the
13 extent that the people from our side and the people from
14 the opposing side of the issue could resolve them. We
15 have a small industry, we know everybody, we know most
16 of the common ownership issues and we felt this was the
17 best reflection of a [sic] impromptu group effort to
18 identify the one grower, one vote scenario.

19 Q. What is your understanding of what this
20 list is being submitted for? Would this be the
21 definitive list or...

22 A. We believe it's a list of people who
23 potentially would fit the criteria as established in the
24 code of federal regulations for voting. It represents
25 the voting universe, if you will, of people that could,

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1 in fact, certify as to being a producer and who was a
2 producer during the representative period.

3 Q. Is it meant to be definitive?

4 A. Definitive in terms of who gets a ballot.

5 Q. Okay, because I think that until we have
6 the Idaho growers, you know, have a chance to input on
7 this, I wouldn't...

8 A. Yes.

9 Q. ...make it final.

10 A. Yeah, I appreciate that comment.

11 Certainly that's the understanding from our part that
12 the opposition is -- Mr. Reel [ph] is going to check
13 with the Idaho growers to make sure that they're
14 comfortable with this. So with that qualification that
15 I made on the front end, I guess it's not quite
16 definitive, but hopefully will be by the time we leave.

17 ***

18 ADMINISTRATIVE LAW JUDGE: Pardon me. That's
19 mine.

20 ***

21 BY MR. CARSWELL:

22 Q. And with respect to the California
23 growers as well, we need to -- we'll need to determine
24 who the California growers are, if there are any, and
25 get them added, as well.

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1 A. We can accept that, sure.

2 Q. And finally, I guess it really comes down
3 to a determination by USDA as to who meets the criteria,
4 if I understand how it works. Is that correct, Ms.
5 Deskins?

6 ***

7 MS. DESKINS: Yes, that's correct.

8 MR. CARSWELL: Okay, sorry. Thank you.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
10 Carswell. Mr. Moody?

11 ***

12 BY MR. MOODY:

13 Q. Yes, Steve, so you're -- as I understand
14 correctly, you're agreeing with the principle that in
15 order to be a qualified voter, you'd need to have
16 commercially produced hops during the year most recently
17 available immediately prior to the referendum?

18 A. Well, I read the exact verbiage out of
19 the Section 900.402. I -- you know, I don't think
20 anybody on either side can represent that a person is a
21 producer other than ourselves and again, we wanted to
22 put together a list that identified the universe and --
23 of potential voters and we don't even know when the
24 referendum is going to take place, but certainly -- for
25 example, it you know, takes place next week, growers are

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1 going to have to determine and certify that they are --
2 meet both criteria. If it takes place in April, it
3 probably would affect who considers themselves a
4 producer and who doesn't, but I don't think either side
5 can really make that type of determination of who's
6 eligible and who isn't.

7 Q. All right. But not that USDA regulations
8 are always clear, so I think this is a real good
9 exercise to go through -- at least come close to getting
10 a registered voter list. I think it's a very -- I very
11 much want to be a cheerleader for the openness and
12 cooperativeness of this process because you -- in some
13 programs you can't even find out who's a voter. They
14 keep it a state secret. So this is a welcome breath of
15 fresh air. But -- so -- but I want to try to -- I want
16 to ask you to distinguish the case from having
17 production resources available to you and actually
18 producing a crop and tell me if you think that
19 difference matters?

20 A. The difference between having production
21 resources available to me and producing a crop?

22 Q. Right. Like unstrung hops you had no
23 commercial sales from in the voting year, but --
24 compared to a grower who actually had commercial sales
25 from his crop.

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1 A. Well, I think it's really going to be up
2 to the individual producer to -- when he certifies that
3 ballot on whether or not he considers himself a
4 producer. In my opinion, a guy who has been spending
5 money, incurring costs, keeping plants alive in
6 anticipation that the industry is going to eventually
7 make a decision on whether or not to implement a
8 marketing order, is a producer.

9 ***

10 MR. BARTON: Take a break?

11 MR. MOODY: Even though in a...

12 ADMINISTRATIVE LAW JUDGE: Let's go off record
13 to change the tape at 11:06.

14 ***

15 [Off the Record]

16 [On the Record]

17 ***

18 ADMINISTRATIVE LAW JUDGE: We're back on
19 record at 11:06. Mr. Moody, you may ask your next
20 question.

21 ***

22 BY MR. MOODY:

23 Q. Oh. Okay, but you -- think a -- I'm --
24 it's -- USDA rule has the word commercial in front of
25 production and that's kind of where I'm hung up. And

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1 this is somewhat of a unique industry, of course, but
2 it's -- the USDA rule seems to suggest you need to not
3 just be able to produce, but actually commercially
4 produce the crop to be an eligible voter.

5 A. Is that language you're taking from the
6 code of federal regulations on voting?

7 Q. Yes, sir.

8 A. Can you show me where that's at?

9 Q. It was the one you were referring to.
10 That 900.402. And it's -- I'm not saying it's clear or
11 anything -- it's got its own problems.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Would you read it,
14 Mr. Moody?

15 MR. MOODY: If Your Honor will give me a few
16 minutes to find it.

17 ADMINISTRATIVE LAW JUDGE: Surely. Let's go
18 off record for just a moment.

19 ***

20 [Off the Record]

21 [On the Record]

22 ***

23 ADMINISTRATIVE LAW JUDGE: We're back on
24 record at 11:07. We'll come back to that issue. May I
25 ask if there are others who have questions for Mr.

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1 Carpenter about the list? Ms. Deskins?

2 ***

3 BY MS. DESKINS:

4 Q. Mr. Carpenter, my first question is what
5 time period is this list meant to represent?

6 A. I'm not sure if it's meant to represent a
7 particular time period.

8 Q. Okay, then I'm wondering is this a
9 storable record of people who have had hop production
10 through the last decade?

11 A. Well, I think it's -- and I -- you know,
12 I don't misrepresent what the opposition thinks the list
13 is, because we did try to cooperate to put it together,
14 but in my opinion, it is a list of people who
15 potentially would qualify under the two criteria listed
16 in the 900.402. They were a producer during the
17 representative period and potentially could certify
18 themselves as a producer in the event a referendum is
19 held in the near future.

20 Q. Okay. So this -- the time period, then,
21 on this would be approximately from 1997 to the present?

22 A. I think that's probably fair.

23 Q. Okay. My next question is this doesn't
24 include any brewers that have -- breweries that have
25 acreage?

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1 A. The only brewery that I am aware of is in
2 northern Idaho and that would be the Elk Mountain Farms
3 that I believe is owned by Busch-Aq Resources [ph].

4 Q. Okay. Because my other -- my last
5 question was shouldn't Anheuser-Busch's name be on here?

6 A. That would be the Elk Mountain Ranch, to
7 my understanding.

8 Q. Okay. And that's how it appears on this
9 list, then?

10 A. Correct.

11

12 MS. DESKINS: Okay. I have no more questions.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.

14 Deskins. Are there other questions before we return to
15 Mr. Moody? There are none. Mr. -- oh, yes. Mr. Roy?

16 ***

17 BY MR. ROY:

18 Q. I might ask Mr. Carpenter how a grower
19 that may have raised hops in 2000-2001 and had inventory
20 and moved it in. Is that taken into account here, or --
21 I mean, if a person had inventory and was commercially
22 selling it into future years or something, is that?
23 Would that be a grower?

24 A. Somebody who had...

25 Q. Well, if I think a grower was to be a

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1 hundred percent idle in one year, let's say 2002, but
2 produced hops in 2001 and had inventory and sold it in
3 those years. Was -- I guess the question would be did
4 you take that into account when you created this list?

5 A. I don't think I did. I think it was just
6 an attempt, again, to make a list of the potential
7 universe of voters that might be eligible to vote at the
8 time of a referendum and I'd also like to add for the
9 record that no, I'm not French.

10 Q. ADMINISTRATIVE LAW JUDGE:
11 Thank you, Mr. Carpenter. Mr. Gasseling?

12 ***

13 BY MR. GASSELING:

14 Q. Steve, I -- just a point of clarification
15 for me so I understand it. I think the argument has
16 been that if you didn't commercially produce hops in a
17 given year, you're not considered a commercial producer
18 and the clarification I think I would ask you is that
19 there could be a situation where -- and this is a
20 hypothetical -- where a grower grew his hops
21 uncontracted in crop year '01 or in 2000 and did not
22 grow in the growing period time, left the hops on the
23 ground and used that inventory to fill contracts and
24 fill his situation in the crop year that's being
25 considered as a grower being eligible. In that case,

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1 would you consider that that grower is a bona-fide
2 grower even though -- forget the fact that he didn't
3 grow commercially, but would you consider that a
4 commercial grower?

5 A. Well, I think he fits certainly one part
6 of the criteria for voting in that he did produce hops
7 and he was a producer during the representative period
8 and in that case if he's -- in my opinion, if I were a
9 grower who was producing hops and at the time of the
10 referendum I would sign the thing certifying myself as a
11 producer.

12 Q. And one other question for clarification.
13 It's my understanding that this list, representative
14 list, is basically an attempt to identify people that
15 would have been producers in 2001 and 2002 for
16 eligibility of base and the '97 to 2002 period is
17 actually just a period for -- the ability to calculate
18 the base, is that correct?

19 A. Well, what it's -- what the regulations
20 say is essentially, there's two criteria. If they're a
21 producer during the representative period and they're
22 willing to certify that they're a producer now, they're
23 eligible to vote.

24 ***

25 MR. GASSELING: Okay. Thank you.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Gasseling. Mr. Carswell?

3 ***

4 BY MR. CARSWELL:

5 Q. Yes, Mr. Carpenter, I was just going to
6 ask -- now, we've got these -- the check marks -- is it
7 correct that these are the folks who were not -- have
8 not produced in the last -- just last year or two? Is
9 that accurate? Is that -- and the ones where we had the
10 question mark...

11 A. No, that's not accurate.

12 Q. Okay. What is -- what does the X
13 indicate?

14 A. The X indicates that there might be a
15 question from one side or the other whether or not they
16 are a producer.

17 Q. Right. But I thought that was based on -
18 - I thought you said for each of those it was based on
19 the fact that there's a question of whether they
20 produced in the past season or perhaps the past two
21 seasons, is that -- that's not accurate?

22 A. I don't believe so. No.

23 Q. Okay. Well, what is -- what are the
24 issues, then, with each of these?

25 A. There is a question from one side or the
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1 other on whether or not they would be able to certify
2 themselves as a producer.

3 A. I -- I'm sorry. I thought we went over
4 that before and I thought for each of these -- so let me
5 start again. With...

6 ***

7 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, let
8 me interrupt you. Mr. Moody, did you find the language
9 in the regulation? Let's come back to the reasons one
10 side or the other might have called a name into question
11 in a moment, Mr. Carswell and go back to the language in
12 the regulation.

13 MR. MOODY: Okay, Your Honor, this is
14 7CFR900401H producer. It means any person defined as a
15 producer in the order who -- there's some subsections
16 here. "1) owns and farms the land resulting in his
17 ownership of the commodity produced thereon, 2) rents
18 and farms land resulting in his ownership of all or a
19 portion of the commodity produced thereon or 3) owns
20 land which he does not farm and as rental for such land
21 obtains the ownership of a portion of the commodity
22 produced thereon. Ownership or leasehold interest in
23 land and the acquisition in manner other than as
24 heretofore set forth of legal title to the commodity
25 grown thereon shall not be deemed to result in such

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1 owners or lessees becoming producers." Not that that's
2 all very helpful, but that's what...

3 ADMINISTRATIVE LAW JUDGE: So the key is the
4 ownership of the crop. Is that what's common to the
5 three ways you can become eligible?

6 MR. MOODY: Your Honor, I've been over and
7 over and over and over this thing and to try see how
8 it's consistent with the one entity, one vote kind of
9 principle I think everyone agrees in concept on and I
10 think this was written in the '30s, so I think it
11 focuses on ownership of land or focuses on farming,
12 whether it's through ownership or lease, and ownership
13 of the commodity resulting from that farming operation.

14 ADMINISTRATIVE LAW JUDGE: That's a very good
15 summary. Good. Okay. All right, back to Mr. Carswell.

16 ***

17
18 BY MR. CARSWELL: Mr. Carpenter, besides the
19 names that we have here and the list of growers, are
20 there any other Washington growers that you're aware of
21 that might be added to this list in the future?

22 MR. CARPENTER: None that we could think of.

23 MR. CARSWELL: Okay. Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
25 Carswell. Mr. Moody?

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1 MR. MOODY: Steve, would you continue the
2 openness I'm so proud of you all for doing here by -- at
3 the time of the actual referendum, which is -- usually
4 go for a 30-day period, making sure that all of the
5 people who are -- who certify themselves as producers
6 are made available on a public list, just so -- you
7 know, everybody can kind of keep track of who actually
8 shows up to vote as opposed to the people you think are
9 supposed to vote.

10 ADMINISTRATIVE LAW JUDGE: Mr. Carpenter,
11 before you answer. I'm not sure you are the right one
12 to answer that question. I think...

13 MR. CARPENTER: That's what I was going to
14 say, Your Honor.

15 ADMINISTRATIVE LAW JUDGE: All right. I think
16 it's the USDA process that you do not control.

17 ***

18 BY MR. MOODY:

19 Q. All right. I just wanted to see if the
20 group is going to support the concept.

21 A. I think we support the concept of the
22 USDA conducting the election in a way that's prescribed
23 by the code of federal regulations and I think really
24 both sides have to leave it up to individual producers
25 to certify as to their eligibility at the time of the

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1 referendum. That's what the code says.

2 Q. Right. But you wouldn't you be
3 concerned, for example, if there's 96 voters on your
4 list and at the time of referendum, 142 votes are cast?

5 A. Well yeah, that would concern me but I'm
6 not sure what I can do to solve the problem or really,
7 anybody on the proponents committee or the opposition,
8 as far as that goes. Again, this is just an attempt to
9 be helpful to the Department from both sides of the
10 issues. This was a joint effort to put this together.
11 There's been many questions asked. I think both sides
12 have agreed upon a one grower, one vote scenario and we
13 would like the Department to consider our attempt to put
14 together this list as just an attempt to be helpful in
15 the process.

16 ***

17 MR. MOODY: Thank you.

18 ADMINISTRATIVE LAW JUDGE: Other questions for
19 Mr. Carpenter with regard to the list? Ms. Deskins?

20 ***

21 BY MS. DESKINS:

22 Q. Mr. Carpenter, I just want to clarify
23 these X's. Just because someone's name has an X by it
24 doesn't necessarily mean there's anything wrong. It
25 could be they are a producer.

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1 A. That's correct.

2 Q. All this saying is there's a question in
3 peoples' minds.

4 A. That's right.

5 ***

6 MS. DESKIN: Okay. I have no further
7 questions.

8 ADMINISTRATIVE LAW JUDGE: Thank you. Other
9 questions for Mr. Carpenter from anyone? Yes.

10 MR. PUTERBAUGH: Does my name has an X by it?

11 MR. CARPENTER: No, but it will shortly.

12 ADMINISTRATIVE LAW JUDGE: Just for the
13 record, would you identify yourself at a microphone?

14 MR. PUTERBAUGH: I hate a mike. This is
15 Stacey Puterbaugh.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
17 Puterbaugh. All right. Other questions for Mr.
18 Carpenter on this issue? I think this was an enormous
19 effort and I thank the participants who put it together.
20 I think it's a very big help. Mr. Carpenter, anything
21 further you'd like to say before you step down?

22 MR. CARPENTER: No. You know, one quick --
23 you know, I've sat through these hearings for -- it
24 seems like a month. I guess it's been eight days. We
25 are a small industry and I think we, you know -- we know

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1 who the growers are, we know how a one grower, one vote
2 effort will help the process and I think it's just a
3 [sic] exhibit of how the industry can work together,
4 both from -- from both sides of this issue to make this
5 thing a little bit easier and so -- thank you, Your
6 Honor.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Carpenter. Is there any objection to the admission into
9 evidence of Exhibit 57? There is none. Exhibit 57 is
10 admitted into evidence. Mr. Monahan?

11 MR. MONAHAN: Thank you, Your Honor. The
12 proponents would call Mr. Duane Desserrault.

13 ADMINISTRATIVE LAW JUDGE: While copies of Mr.
14 Desserrault's statement are being distributed, I have
15 marked it as Exhibit 58 and I'm going to hand the record
16 copy to Mr. Desserrault so that he might sign it. Thank
17 you. Mr. Desserrault, would you please state and spell
18 your full name for the record?

19 MR. DESSERRAULT: Duane Desserrault, D-u-a-n-e
20 D-e-s-s-e-r-a-u-l-t.

21 ADMINISTRATIVE LAW JUDGE: Thank you. Would
22 you raise your right hand, please?

23 ***

24 [Witness sworn]

25 ***

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1 ADMINISTRATIVE LAW JUDGE: Thank you. Would
2 you like to begin by reading your statement?

3 MR. DESSERAULT: Yes, I would.

4 ADMINISTRATIVE LAW JUDGE: You may proceed.

5 MR. DESSERAULT: "My family has grown hops in
6 the Yakima Valley for over 40 years. I'm a third-
7 generation grower -- and yes, I may be French. To
8 address Dr. Hinman's inevitable question, yes, we would
9 be considered a small operation in the current year.
10 That covers both hops and other crops. A short time
11 ago, I would not have been able to say this. Just a
12 couple of years ago we would not have qualified as a
13 small business. We have reduced our acres substantially
14 during the last couple of years. This, on the surface,
15 seems to be a reasonable approach to take when there's
16 excess surplus on the market. A very short time ago my
17 family grew about 300 acres of hops. This year we grew
18 about a hundred acres of hops. We have been growing
19 super alpha varieties since 1994. We were fortunate to
20 be associated with a merchant that gave us access to the
21 variety earlier than some in the industry. At the time
22 this seemed to be advantageous. Looking back, I now
23 realize that the efficiencies gained by this new
24 technology were beneficial. The problem is these
25 efficiencies were not captured by our farm. I've

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1 thought about this as the years have gone by. My family
2 has gained no long-term benefit from this. I would like
3 to think that the merchant received the benefit, but
4 that merchant's no longer in business. This new
5 technology must have been -- must not have been very
6 beneficial to them, either. I thought that possibly
7 consumers received some of the benefit from this
8 technology, but the cost of beer has seen no decrease
9 during this time. I'm not sure who we gave the benefits
10 to. Our reduction of acres has not gone unnoticed. In
11 fact, as we reduced acres, others with a different
12 farming strategy have increased acres. This I don't
13 mind too much, other than the fact that some of the same
14 growers that have been complaining about the long
15 stretch of low prices due to oversupply are some of the
16 very people that are expanding their own farms. Yes,
17 I'm sure they feel efficient when they do this. I'm
18 sure of this because I've seen how the efficiency of our
19 farm has decreased as we've reduced acres. We've
20 removed trellis from some of our acreage. I don't
21 suppose it'll likely go back in any time soon. I do
22 support a marketing order similar to what has been
23 proposed. I do agree with the testimony of those that
24 have said a) the proposed order will not be an instant
25 cure-all and b) it will allow for orderly expansion when

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1 needed. I've had discussions with many growers during
2 the past couple of years. I do believe there's a
3 general consensus among growers that overreaction to
4 perceived demand by many individuals may be the greatest
5 downfall of our industry. Much testimony has been
6 presented regarding our collective strengths as American
7 growers. Let's all take advantage of this collectively.
8 I sincerely thank everyone involved for all of the
9 effort that's been put into this nearly overwhelming
10 chore."

11 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
12 Desserault. Mr. Monahan, any questions?

13 MR. MONAHAN: There are no questions from the
14 proponents committee.

15 ADMINISTRATIVE LAW JUDGE: All right.

16 MR. DESSERAULT: Thank you. You and the
17 proponents committee.

18 MR. ROY: I have just one question, very
19 simple.

20 ADMINISTRATIVE LAW JUDGE: All right, Mr. Roy.

21 MR. ROY: Okay. No, how you may be French.

22 MR. DESSERAULT: I may be.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.
24 Questions from those who are in a position against the
25 marketing order? Mr. Carswell?

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1

2

BY MR. CARSWELL:

3

Q. Sir, I'd like an answer on that question.

4

Yes or no?

5

A. Yes, I may be.

6

Q. All right. You mentioned that your

7

family grew 300 acres of hops a very short time ago.

8

When was that? When's the last year that your grew that

9

many acres?

10

A. Probably '99, possibly '98.

11

Q. Thank you. So you've gone from about 300

12

to 100 between '98, '99 and today. If you had had

13

profitable contracts to continue to grow the 300 acres,

14

would you have continued to grow those 300 acres?

15

A. The question is about profitable

16

contracts.

17

Q. Yes, sir.

18

A. I am certain I would have.

19

Q. And presuming that there are growers out

20

there who have had -- who have been fully contracted or

21

almost fully contracted, it would make economic sense

22

for them to continue to grow or even expand. Is --

23

would you agree with that?

24

A. Is this question related to the first

25

question?

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1 Q. Yes, sir. If they were fully contracted
2 with -- let me put the proviso in with profitable
3 contracts, would it be -- that would make economic
4 sense, would it not?

5 A. I would think it would, yes.

6 Q. Yes, sir. If these expanding -- is it
7 your understanding, based on the testimony that's been
8 presented during the hearings, that an expanding grower
9 may be required to acquire base to continue to maintain
10 the level of supply that they've been providing to date?

11 A. My understanding is that is possible,
12 yes.

13 Q. And if not, they would perhaps --
14 depending on the cut in the saleable quantity -- they
15 would perhaps have to reduce acreage. Is that your
16 understanding? If they don't acquire the base?

17 A. No, that's not my understanding.

18 Q. Okay. If a stable or expanding producer
19 does not have the wherewithal or just chooses not to
20 acquire base that would be needed because of a cut in
21 the saleable quantity, that person wouldn't be able to
22 sell the same amount, perhaps. Is that correct?

23 A. That's my understanding, yes.

24 Q. But he could produce it?

25 A. Yes, he could.

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1 Q. You've noted that you've seen how the
2 efficiency of your farm decreased as you reduced acres.
3 Is that accurate? If a current grower had to reduce
4 what he sells because he didn't have enough to produce,
5 wouldn't you see increased inefficiencies with that
6 producer, as well?

7 A. In most cases that's a possibility. I
8 believe there could be a very case made in some cases
9 that a reduction in acres would increase the efficiency
10 of the operation. So depending the status of the
11 operation at whatever point we might be talking about.
12 It could go either direction. We were not large to
13 start with now we're really not large.

14 Q. If someone fully contracted profitable --
15 either had to cut acreage or produce hops that he can't
16 sell, give me some examples of how he would be -- or
17 some scenario where he would be more efficient by
18 cutting production and having presumably the same fixed
19 costs over the same acres. Over reduced acres, I'm
20 sorry.

21 A. If a producer is in a situation where
22 they've got a given capacity to harvest, you have -- I
23 was going to assume -- I should -- I guess I'm not here
24 to ask questions, but there are different harvests when
25 there's available for different varieties of hops. If a

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1 producer is not able to fit his acreage in an orderly
2 manner into the given harvest when those -- there's some
3 definite lack of efficiency there. If you're picking a
4 crop that's substantially overripe or under ripe or
5 you're paying somebody else more than it would cost you
6 to do it yourself, that would be one example.

7 Q. As a general -- well, because -- in 1999,
8 I believe you said was your last year of maximum
9 reduction. You're down to 100 acres now.

10 A. Um-hum.

11 Q. You'll receive a base under the base
12 allotment set-up of approximately -- should be 300
13 acres. Is that correct?

14 A. I don't know. I don't think I can answer
15 that. I don't think it is. Acreage doesn't have a lot
16 to do with it.

17 Q. Actually, I think you're right, Mr.
18 Desserrault. You're going to have an increase base
19 allotment based on your production back in '99 as
20 compared to what you're currently growing, is that
21 accurate?

22 A. That's what I understand, yes.

23 Q. And so you would -- would you -- you
24 think you'll expand your operation now or hold the base
25 or sell it? I'll give you several choices there.

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1 A. My expectation would be if I had the base
2 available and I had a market available to me at a level
3 that I was interested in participating in, I would like
4 to think that I would increase acreage, but that's a
5 couple of pretty large ifs.

6 Q. But you might increase production?

7 A. I may.

8 Q. Would that take the place of someone else
9 who's producing now and may have to decrease because
10 they don't have the base?

11 A. I think that could be a possibility, yes.

12 Q. Do you think that's fair?

13 A. That's a good question and I'm not sure
14 I'm going to have an answer for you on that. I'll just
15 leave it at that. I don't think I have an answer for
16 that.

17 ***

18 MR. CARSWELL: That's all I have, Mr.
19 Desserault. Thank you.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
21 Carswell. Mr. Moody?

22 ***

23 BY MR. MOODY:

24 Q. Yes, Mr. Desserault. Thank you. Your
25 farming operation is diversified among other

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1 commodities?

2 A. Slightly.

3 Q. But hops is your main farming operation?

4 A. Correct.

5 Q. Alpha or aroma?

6 A. Both.

7 Q. And for this year do you have contracts?

8 A. For the '03 year?

9 Q. Yes.

10 A. Yes.

11 Q. In your statement you said that you
12 support a marketing order similar to what has been
13 proposed and I wondered if you thought that there needed
14 to be some changes to it?

15 A. Yeah. It's more than I anticipated.

16 Q. Okay, could you go through those?

17 A. What day would you like me start on it?

18 Q. I don't know. You're the expert.

19 A. That's quite kind. As I see it being
20 currently proposed, as of right now I find that very
21 acceptable. The way it sits today.

22 Q. Okay. So you think it's similar to what
23 was 10 days ago.

24 A. The proposed order, yes.

25 Q. Okay. So you're -- with the assorted
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1 changes in language that've been made, you're not
2 suggesting there needs to be further changes?

3 A. Not today.

4 Q. Oh, okay. I mean, did...

5 A. No. I mean, I'm being a little
6 facetious. I think there's been substantial -- at least
7 in my interchanges made and as far as I'm concerned, I
8 am currently satisfied with the way it's currently being
9 proposed.

10 Q. Okay. Now you're the -- you mentioned
11 that your -- when brought in that super high alpha acid
12 that you didn't obtain any benefit from that? Is that
13 correct?

14 A. No long-term benefit.

15 Q. Was there a short-term benefit?

16 A. For our own operation, I feel there was,
17 yes.

18 Q. Didn't it give you a competitive
19 advantage over other growers of alpha that weren't using
20 as productive a variety?

21 A. I think it did, to some extent. I think
22 more importantly, it gave us an advantage, as US growers
23 in comparison to the rest of the world, which I would
24 like to think that's what we should be looking at.

25 Q. Looking at, meaning continuing to get

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1 more productive?

2 A. Yes.

3 Q. But -- do I understand you to -- or would
4 you agree with me that the benefits you obtained over
5 the short term by planting the super high alpha acid
6 varieties will be eroded over the long term as other
7 producing regions switch to them?

8 A. No. What I'm saying is when they first
9 came into existence there was more -- or, I shouldn't
10 say more -- there was profit to be made on each acre
11 that was planted. The bulk of that's gone today, even
12 though we have varieties and technology that should give
13 us substantial advantage compared to the rest of the
14 world. I don't feel our industry's taking advantage of
15 that collectively.

16 Q. Okay. So even though your cost of
17 production is lower than your competitors, the
18 oversupply problem is so bad that -- well, doesn't that
19 still -- if your cost of production's lower than your
20 competitors even though prices may seem relatively low,
21 doesn't that still give you an advantage over them?

22 A. Not if I'm not here tomorrow. The cost
23 being lower than a competitor is one thing, but if
24 something more than that cost isn't being returned to
25 me, it doesn't do me a lot of good.

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1 Q. Other than the marketing order here for
2 the four states, what prospect do you see for
3 controlling the world oversupply of alpha?

4 A. None, whatsoever.

5 ***

6 MR. MOODY: Okay. Thanks, Mr. Desserault. I
7 appreciate it.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Moody. Are there other questions from those who are in
10 a position against a marketing order? There are not. I
11 would invite questions from neutral parties, starting
12 with the United States Department of Agriculture. Ms.
13 Finn?

14 ***

15 BY MS. FINN:

16 Q. Do you have direct contracts with
17 brewers?

18 A. No.

19 ***

20 MS. FINN: Thank you.

21 ADMINISTRATIVE LAW JUDGE: Dr. Hinman?

22 ***

23 BY DR. HINMAN:

24 Q. You hear all about trends at this
25 hearing. I think I observed one more trend and that is

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1 the increasing anticipation of my question, which you
2 have done. Thank you for that. So you've anticipated
3 the one inevitable question, but that leads to another
4 inevitable question. And that is if you could
5 hypothesize that you were -- continued to be a small
6 grower in a possible future marketing order?

7 A. That's a possibility.

8 Q. And I'm asking you as I have asked
9 previous grower witnesses to think of yourself in terms
10 of the, you know, compliance cost -- the burdens that
11 might be associated with that, as a grower, to be part
12 of the marketing order and to distinguish whether that
13 impact will be different in your view or more burdensome
14 than it would be to a large grower. This distinction is
15 important to us.

16 A. I would assume it would not be more
17 burdensome.

18 ***

19 DR. HINMAN: Okay. Thank you very much.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
21 Hinman. Other questions from USDA representatives?
22 There are none. Are there any other questions from
23 anyone? Mr. Carswell?

24 ***

25 BY MR. CARSWELL:

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1 Q. Mr. Desserrault, just one more question.
2 If you were a small grower who had to acquire base as
3 opposed to a small grower who has excess base, such as
4 yourself, would you think it would be -- the HMO would
5 be more burdensome on that small grower who has to
6 acquire base?

7 ***

8 MR. MONAHAN: For the purposes of the question
9 are you assuming that the base would have to be acquired
10 at a cost?

11 ***

12 BY MR. CARSWELL:

13 Q. Yes.

14 A. I assume if you're going to pay for
15 something, that would be considered a burden. I think
16 the amount that you would have to pay in comparison to
17 the potential benefits would have to be looked at by
18 each individual. I -- if you call an expense a burden,
19 it's a burden. I would like to think that expenses in a
20 business transaction would be looked at as something
21 other than a burden. Something that would have a
22 potential benefit.

23 Q. Let me ask you one more question, then.
24 If you both -- if you and that other grower had to --
25 had a contract for the same price for the same amount of

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1 alpha, which would constitute 300 acres of production...

2 A. Um-hum.

3 Q. ...and you've got 300 -- you've got the
4 base for that and the other buyer needs to buy half of
5 the amount needed for -- to be able to sell that because
6 he doesn't have enough base, would you see that as a
7 burden on him as compared to yourself?

8 A. This may not answer your question, but I
9 would like to amortize that over the last three to five
10 years and put some of my costs of not growing some of
11 those hops through those years in comparison to what a
12 potential expense for base might be and I think if we
13 take a look at it that way, you have a whole different
14 outlook on it.

15 Q. So you would say that he had -- that
16 grower should take some of the responsibility for the
17 acreage you haven't been selling. Is that what I
18 understand?

19 A. It's pretty blunt, but I suppose so.

20 ***

21 MR. CARSWELL: Thank you, sir.

22 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
23 Carswell. Any other questions for Mr. Desserault? Mr.
24 Monahan?

25 ***

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1 BY MR. MONAHAN:

2 Q. Thank you. Mr. Desserrault, you were
3 asked by Mr. Carswell whether your '03 crop was
4 contracted. The '03 crop is in the barn, so to speak.
5 Right?

6 A. Yes.

7 Q. If you've already harvested it, it would
8 be hard to call those forward contracts, wouldn't it?

9 A. Correct. And maybe I should ask -- maybe
10 I should've asked before I answered it -- was I asked if
11 all of my crops were contracted or if I had contracts?
12 The question I answered was if I had contracts...

13 Q. Let me phrase it a different way. What
14 percentage -- if you assume that in '04 you produce the
15 same volume that you produced in '03...

16 A. Um-hum.

17 Q. ...what percentage of your anticipated
18 '04 harvest is contracted as we sit here today?

19 A. Does a consignment agreement constitute a
20 contract? Okay. Of our -- comparison between the two
21 years...

22 ***

23 ADMINISTRATIVE LAW JUDGE: I'd like you to
24 start not counting the consignment. Start just with...

25 MR. DESSERRAULT: You're getting quite personal

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1 there.

2 ADMINISTRATIVE LAW JUDGE: Well...

3 MR. MONAHAN: Your Honor. Your Honor, if...

4 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

5 MR. MONAHAN: If he -- if it's a proprietary
6 issue, I withdraw the question.

7 ADMINISTRATIVE LAW JUDGE: All right. Yes.
8 Don't answer anything that would put you at a
9 competitive disadvantage.

10 MR. DESSERAULT: Appreciate that.

11 MR. BARTON: Can we take a break now?

12 ADMINISTRATIVE LAW JUDGE: All right. We'll
13 change the tape at 11:50.

14 ***

15 [Off the Record]

16 [On the Record]

17 ***

18 ADMINISTRATIVE LAW JUDGE: We're back on
19 record at 11:50. Mr. Monahan, do you have any further
20 questions for Mr. Desserault?

21 MR. MONAHAN: I don't, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: All right. Are
23 there any other questions for Mr. Desserault? Is there
24 any objection to the admission into evidence of Exhibit
25 58? There being none, Exhibit 58 is hereby admitted

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1 into evidence. Mr. Desserault, thank you. You may step
2 down. Mr. Monahan, do you wish to call an additional
3 witness now?

4 MR. MONAHAN: I think the proponents committee
5 is fresh out of farmers for the moment and we are
6 anticipating three more producers in favor of the
7 marketing order this afternoon, as well as the --
8 hopefully, a last rebuttal by Mr. Smith. It probably
9 makes sense to turn it over to the opponents.

10 ADMINISTRATIVE LAW JUDGE: All right. Mr.
11 Moody?

12 MR. MOODY: How many did he say he had -- new
13 growers this afternoon?

14 ADMINISTRATIVE LAW JUDGE: He said he had
15 three more.

16 MR. MOODY: Three more, Brendan?

17 MR. MONAHAN: Three more.

18 MR. MOODY: New ones?

19 MR. MONAHAN: I don't think they fit the
20 definition of new producer.

21 MR. MOODY: No, but new people who aren't
22 hanging around? All right. Can we have a short break?

23 ADMINISTRATIVE LAW JUDGE: Yes. Let's take a
24 10 minute one. Please come back at one minute after
25 12:00 noon.

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1 MR. MOODY: Also, could I ask Your Honor about
2 since checkout time is coming up, what the -- what
3 peoples' -- what Your Honor's intentions are as far as
4 lunch goes?

5 ADMINISTRATIVE LAW JUDGE: I'll let you
6 choose. Do you want to break for lunch now?

7 MR. MOODY: Yes, now is fine.

8 ADMINISTRATIVE LAW JUDGE: Okay.

9 MS. DESKINS: Your Honor, I do have one...

10 ADMINISTRATIVE LAW JUDGE: Ms. Deskins?

11 MS. DESKINS: Since we've got to end by 5:00
12 today, if they have witnesses that need to go on, I
13 think we need to take that into consideration because
14 when the hearing's over with, they won't be able to
15 testify.

16 ADMINISTRATIVE LAW JUDGE: Do you want an
17 abbreviated lunch, Mr. Moody, that would allow people to
18 check out? Or if they have to both check out and get
19 something to eat, maybe an hour is needed, but it's your
20 choice, Mr. Moody. Check with your client back on the
21 corner there.

22 MR. MOODY: An hour, Your Honor.

23 ADMINISTRATIVE LAW JUDGE: An hour, all right.
24 Please be back and ready to go at 12:55, so it's a
25 minute to 1:00.

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1

2

[Off the Record]

3

[On the Record]

4

5

ADMINISTRATIVE LAW JUDGE: We're back on record at 1:01. Before we begin, I just want to report the way time was consumed yesterday, which I have calculated. I still haven't gotten back to what was left over from the day before, which I will do. But yesterday, three hours were devoted to the proponents and three and three quarter hours to those against a marketing order. And I'll have some other times for you as we go. I've got them in progress for what we've done so far today and what we had done the day before yesterday that I haven't told you yet. All right, Mr. Monahan. Are you ready to go forward with another grower?

18

MR. MONAHAN: Actually, Your Honor, we are turning the floor over to the opponents.

20

ADMINISTRATIVE LAW JUDGE: All right. And Mr. Moody, you may call a witness or whatever you wish.

22

MR. MOODY: We could play poker, Your Honor.

23

ADMINISTRATIVE LAW JUDGE: You know, that wouldn't be as much fun as hearing what these people have to say.

25

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1 MR. MOODY: Okay. In that case, I'll ask
2 Aaron Gamache to come up and testify. That apparently
3 would be of the famous Gamache.

4 ADMINISTRATIVE LAW JUDGE: You know, I already
5 know how to spell the name. Thank you, Mr. Gamache.
6 I'm marking Mr. Gamache's statement as Exhibit 5-9, 59.
7 Mr. Gamache, I'd like you to state and spell your name,
8 please.

9 MR. GAMACHE: Aaron M. Gamache. A-a-r-o-n,
10 middle initial M., G-a-m-a-c-h-e.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
12 Gamache. I marked your statement as Exhibit 59. I'm
13 going to swear you in now. Would you raise your right
14 hand?

15 ***
16 [Witness sworn]

17 ***

18 ADMINISTRATIVE LAW JUDGE: All right. Would
19 you like to begin by reading your statement?

20 MR. GAMACHE: Sure. "To whom it may concern.
21 My name is Aaron M. Gamache. I'm here representing Amos
22 Gamache Farms, Inc., a grower of hops, grapes, and
23 apples. Our farm has taken a position against the
24 federal marketing order, primarily because of the
25 production restrictions" -- and I guess I need to change

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1 production to sales restrictions, or -- I'm sorry.

2 ADMINISTRATIVE LAW JUDGE: Thank you.

3 MR. GAMACHE: "It is our opinion that US
4 growers do not control enough of the worldwide
5 production to significantly alter its price except
6 possibly in the very short term. German growers being
7 our primary export competition, have the will,
8 knowledge, and means to be very competitive in the world
9 alpha market, though they can't respond to market
10 situations as rapidly as US growers because of their
11 difficulty producing a significant baby crop. In the
12 medium to long term they will fill any US reduction with
13 their own product. For these reasons we see very little
14 financial advantage to implementing a federal marketing
15 order with production controls" -- and again, the
16 production I guess needs to be changed to sales -- "and
17 possibly a significant expense."

18 ADMINISTRATIVE LAW JUDGE: Thank you. And
19 then it's signed and you have signed it with your own
20 name and also Amos Gamache Farms. Inc.

21 MR. GAMACHE: Yes. I'm here representing our
22 organization.

23 ADMINISTRATIVE LAW JUDGE: All right. And
24 Amos is spelled A-m-o-s. Would you like me to actually
25 change on the Exhibit 59 or hand it to you so you could

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1 change the two places where production restrictions --
2 well, one place where production restrictions is found
3 and one place production controls. Do you want to
4 change that on the document itself?

5 MR. GAMACHE: I'd be happy to or it you'd like
6 to. Either way.

7 ADMINISTRATIVE LAW JUDGE: All right. And in
8 those two instances you would like it to sales?

9 MR. GAMACHE: Just put sales to keep it
10 simple.

11 ADMINISTRATIVE LAW JUDGE: Thank you. I have
12 made those changes in the fourth line of the letter. I
13 have stricken production and written sales. And in the
14 last line of the letter I have stricken production and
15 written sales. Thank you, Mr. Gamache. Is there
16 anything in addition that you'd like to say before I
17 invite Mr. Moody to ask you questions?

18 MR. GAMACHE: I'm half French.

19 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
20 Moody?

21 ***

22 AARON GAMACHE,
23 having first been duly sworn, according to the law,
24 testified as follows:

25 BY MR. MOODY:

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1 Q. Thank you, Your Honor. Now, you've had
2 some personal experience with hop growers in other
3 regions in the world?

4 A. I do. I try and maintain regular contact
5 with several German growers and I -- in the past few
6 years have made a couple trips a year to Germany. To
7 the hop growing regions of Germany.

8 Q. And do you do that for reasons of tourism
9 or visiting family or because it's useful information
10 gathering intelligence for you in planning your hops
11 activities?

12 A. A little of each.

13 Q. Okay. And what have you learned in
14 particular about the German hops industry?

15 A. Well, they -- I would say that they're in
16 a similar position to US growers in so far as they've
17 been overproducing certain varieties and converting to
18 higher production varieties. They've got all the
19 infrastructure they need to handle the hops. I would
20 say they're just as efficient as US growers at the
21 handling aspects. In my opinion, they're just ready to
22 pick up any slack we might weigh out.

23 Q. Did you observe some of their producing
24 resources that were being put in place?

25 A. Well, over the last couple of years

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1 you've seen the bottom sort of falling out of the Perle
2 market over there and you've seen -- in my opinion,
3 you've seen a lot of that acreage being converted to
4 higher alpha producing varieties such as Magnum and
5 Taurus. It seems like some of the smaller growers over
6 there -- that there's many more growers than in the
7 United States. I think in the Hallertau alone, it's
8 something like 1800 growers and a lot of them -- the
9 smaller growers have -- they don't have their own
10 picking facilities and such, so they've got
11 consolidation going on that we had going on 15 years
12 ago, I guess, or over the last 20 years, where some of
13 the smaller growers are getting up and that land and
14 trellis is being absorbed by the larger growers, and
15 some are getting out altogether, but it's not really all
16 that different than the things you see going on over
17 here.

18 Q. Did you observe any new trellis being put
19 up?

20 A. Over the last years I actually have seen
21 new fields being planted. This year and last and the
22 year before.

23 Q. And do you agree with some of the
24 previous testimony that the market for alpha is a global
25 competitive market?

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1 A. There are -- there's some demand for
2 specialty alpha, but there is also a juderic [ph] alpha
3 market.

4 Q. So what would you expect to happen to the
5 -- is Germany kind of doing -- catching up, if you will,
6 to the super high alpha acid varieties to what
7 Washington was doing six, seven years ago?

8 A. Well, they don't have the alpha yields
9 that we have yet, but for some reason you seem -- it
10 seems to me that there currently exists more forward
11 contracting in Germany than there is here and for what
12 reason, I don't know. It's almost as if it -- the
13 brewers, or the dealers fill their expected demand with
14 the German crop and then kind of have been using the US
15 growers as a buffer. They buy what they need from us
16 when they need it for current year crop only and kind of
17 the rest of it they forward contract in Europe and I
18 guess I don't know how to say it real well, but we're --
19 we've been kind of used as a balancing part of the
20 industry, that they fill the demand they know that they
21 need to fill, they fill in Germany and then they've kind
22 of used us just as a buffer. It seems to me.

23 Q. To kind of top off the tank?

24 A. Exactly.

25 Q. Are they -- do you know if they're

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1 planning a marketing order in Germany?

2 A. Not that I've heard.

3 Q. What would you expect would happen if the
4 marketing order were set up here and it is -- does
5 achieve its intended goal of reducing the oversupply of
6 US hops resources?

7 A. Could you repeat that?

8 Q. Yes. What would you expect to happen --
9 just kind of think in your mind, look out ahead a few
10 years -- what would happen to the US industry, European,
11 Chinese industry if the US marketing order goes into
12 effect and it does do what they say they want it to do,
13 which is to get producing resources out of the industry?

14 A. I think there'd be a lot of happy German
15 growers. In my opinion, it -- the best thing that could
16 happen to Germany would be for us to implement sales
17 controls on our alpha because it gives them more places
18 to sell theirs.

19 Q. Okay, I'm going to ask you kind of one of
20 those one to ten questions about how likely it is that
21 Germany and China and other areas will make up for alpha
22 acid, whatever the US chooses not to supply, one being
23 not very likely and ten being as certain as gravity.

24 A. Well, in the German case, as far as in
25 the short term, their -- I would say they're -- I would

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1 give them a score of ten. They're ready to go. China,
2 I think they're still having problems filling local
3 demand to be much of an export player yet. But then
4 again, what do I know?

5 Q. Somebody, I think, testified that China's
6 the biggest beer consuming market in the world now?

7 A. It could be true. I don't know.

8 Q. I guess they've got a lot of local demand
9 to fill. What's been your experience in recent years,
10 since 1995 or so, when the higher alpha acid variety
11 started coming in, in your own personal production
12 trends?

13 A. Well, I've been farming full-time since
14 '98, which is when I finished school. I was involved in
15 the farm before then. Personally, we struggled with the
16 first few years with Symphony and then on to Columbus
17 and Tomahawk with the powdery mildew issues and such, so
18 we didn't have a dramatic production increase right off
19 the -- because we were converting from Cluster and then
20 Galenas to some degree. We didn't have the dramatic
21 production increase that maybe some farms that were a
22 little better at growing them did, but we definitely --
23 since '97 our productions have been increasing.

24 Q. All right, then. Going forward to this
25 year, '03. Have you invested new resources in the hop

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1 industry?

2 A. Our farm has -- we were a little slower
3 than some in converting from rill irrigation to drip
4 irrigation. We're now a little over half under drip.
5 We've got a fairly new baling room, I guess relative to
6 the industry. Things of that nature. New propane
7 burners. We've converted a lot of older equipments,
8 retrofitted it to make it more efficient and that sort
9 of thing. I guess we've also picked up some additional
10 trellis.

11 Q. All right, so some of these are capital
12 assets with the hope for long term positive return?

13 A. That's the idea, yeah.

14 Q. Okay. And is it just -- are you -- do
15 you -- are you doing this to take advantage of what you
16 perceive to be some marketing opportunities that you are
17 uniquely situated to exploit?

18 A. I don't know if we're -- I would say
19 we're uniquely situated to exploit, but we saw the
20 opportunity and felt that the risk was suitable for our
21 operation and went forward from there.

22 Q. Are you mostly alpha varieties?

23 A. Yes, mostly. We do grow some aromas, but
24 a small percentage of our crop is aroma.

25 Q. And do you have alpha contracts for this
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1 year?

2 A. Yes, we do. For the '03 year. Yes, we
3 do.

4 Q. Okay. Do you have a position on -- have
5 you done a calculation to see if you might need to buy
6 base if the order were to go into effect?

7 A. If we were to maintain our current
8 growing practices, yes, we would.

9 Q. Okay. And I gather you're against that,
10 then?

11 A. We are.

12 Q. Okay. And why is that?

13 A. We -- I have trouble finding the benefit
14 to the expense.

15 Q. And what would you -- what do you believe
16 should be the period if the order were to go into effect
17 for determining initial allotment bases?

18 A. Logically, to me, the more recent the
19 year would seem to more accurately reflect current
20 market situations, but I understand that a lot of farms,
21 there was a lot of effort made in the '01 and the '02
22 years and by belief people were doing things for what
23 they thought was the benefit of the industry, so I can
24 understand the dispute. Logically, to me, it would seem
25 the more recent years would be more appropriate and

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1 personally, if our ranch -- the '02 year, for instance,
2 is -- was our second-best production year ever, so it
3 would benefit us more to use more recent years, but I
4 understand the argument.

5 Q. Okay, but the -- there's no set-aside
6 program in place -- none of the voluntary-type programs
7 for the '03 year.

8 A. This is true.

9 Q. And there's nothing strange or weird or
10 unique about the climate conditions in the growing
11 states this year?

12 A. Not that I was aware of, no.

13 Q. So this year would represent kind of a
14 fair representation of where the industry is today,
15 after going through the market adjustments to the
16 various factors that have been very well testified to
17 since the early '90s.

18 A. In my opinion, it would be consistent. I
19 don't know if a lot of people agree it would be fair,
20 but I would have no problem with it.

21 Q. Would the '03 season be a -- I'm sorry, I
22 didn't want to say fair. I didn't mean kind of a -- the
23 kind of moral meaning of fair, but I mean a fair --
24 meaning accurate -- would this -- would the '03
25 production be kind of an accurate snapshot of where the

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1 industry is today.

2 A. I believe so, yes.

3 ***

4 MR. MOODY: Okay. Thank you very much, Aaron.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

6 Moody. I would invite questions from others who are
7 here in a position against a marketing order. Mr.
8 Carswell?

9 ***

10 BY MR. CARSWELL:

11 Q. Thank you, Your Honor. Mr. Gamache, you
12 mentioned that -- ostensibly presuming a reduction in
13 the amount of saleable, that you would be someone who
14 would be likely to have to acquire base, is that
15 correct?

16 A. I believe so, yes. We wouldn't have to
17 grow them if...

18 Q. Right.

19 A. ...but if we wanted to grow...

20 Q. To grow the hops. To grow the hops that
21 you would want to grow, you'd have to acquire base...

22 ***

23 MR. MONAHAN: You mean sell.

24 ***

25 BY MR. CARSWELL:

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1 Q. Sell, I'm sorry. Sell. Presumably, you
2 would do that because it would -- you would go out
3 looking for base because you would think that you could
4 still, you know, make money on something even with the
5 acquisition of base, I guess, right?

6 A. Depending on what the base costs, yes.
7 We'd look at that one.

8 Q. And you would go to a -- you'd go to a
9 buyer -- I'm sorry, you'd got to another hop grower who
10 has base to sell and I guess that would be fairly well
11 known who would have base and who wouldn't, I guess.

12 A. To some degree, I'd imagine there'd be
13 some obvious candidates.

14 Q. And presumably, they're going to know
15 that you need it to sell hops, correct?

16 A. This is true.

17 Q. So would you think that they're going to
18 get the best deal they can possibly get from you to...

19 A. If the situation were reversed, I know
20 that's how we'd handle it, yeah.

21 Q. Imagine yourself in competition with
22 another grower for that same contract, but presumably
23 would have -- that you'd want to fulfill by buying base
24 and yet that grower doesn't have to acquire base, he has
25 base to burn. He has plenty of base and so he doesn't

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1 have to go out and buy any. Do you think it's fair that
2 he has that competitive advantage over you and a reduced
3 cost -- presumed cost structure because you would have
4 acquire base?

5 A. I guess I wouldn't really look at it as
6 being fair or unfair, I'd -- it -- a better word would
7 be realistic or that's just the facts of the situation.

8 Q. Would the grower have a competitive
9 advantage?

10 A. He would in that instance, yes.

11 Q. He would have a competitive advantage
12 over you?

13 A. For that particular contract.

14 Q. Yes. You mentioned China as right now
15 not being a real competitive threat with respect to
16 exports from China. Is that accurate?

17 A. To the best of my knowledge. I mean,
18 generally you don't hear -- well, you're starting to
19 more and more, but traditionally, the major exporters
20 have been the US and the Germans.

21 Q. Right. Are there US hop exports going
22 into China?

23 A. I'm -- you know, I don't know that for
24 sure. I would imagine they probably buy some of our
25 hops, but I don't think a lot.

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1 Q. If there were, would you imagine the
2 Chinese hop producers being more of a threat to those
3 imports into China as compared to US exports to other
4 countries?

5 A. I believe they would be a threat, yes. I
6 mean, they'd be competition.

7 ***

8 MR. CARSWELL: That's all I have. Thank you.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
10 Carswell. Dr. Tweeten.

11 ***

12 BY DR. TWEETEN:

13 Q. Thank you, Your Honor. Mr. Gamache,
14 economic text books describe a supply control hop
15 marketing order as a producer cartel -- model it as a
16 producer cartel that would produce large economic
17 benefits to producers although at the expense of
18 consumers, yet you're a member of the hop industry and
19 despite these presumed benefits to producers, you are
20 opposing it. Are you opposing it primarily from the
21 standpoint of you, individually, or of the industry as a
22 whole.

23 A. I would say both.

24 Q. And you have listed some of the reasons
25 why you are opposed to this marketing order. You

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1 mentioned the competitiveness of other countries,
2 presumably, I guess, an elastic demand. What are some
3 of the other reasons that you oppose it?

4 A. Generally, I'm anti-regulation, there's
5 one reason. I don't really see how there can be an
6 equitable way of setting up a program like this. I just
7 don't believe it'll work for a number of reasons.

8 ***

9 DR. TWEETEN: Thank you.

10 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
11 Tweeten. Are there other questions on behalf of those
12 who are here in a position against a marketing order?
13 No. Are there questions on behalf of those who are here
14 in favor of a marketing order? Mr. Monahan?

15 MR. MONAHAN: Your Honor, I do have some
16 questions, but before I do, I would like to make a quick
17 point for the record, at least with respect to the next
18 several witnesses we may hear and that is given the
19 inequitable consumption of time bringing us to where we
20 are in the last afternoon of the last day, I think it is
21 very important to hear from all of the growers who are
22 opposed to the hop marketing order or in favor of it. I
23 would ask that we have a modicum of restraint and
24 perhaps some limitation of argument in the guise of
25 direct examination, because I think we've heard those

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1 arguments before.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
3 Monahan. If -- to some extent, brewers, for example,
4 need to push their economic theory and their philosophy
5 at this kind of a hearing rather than their individual
6 witnesses, so I want to allow them to do that and so
7 long as it's kept brief, I think an excellent way for
8 them to explore those economic theories, ideas,
9 philosophies, is with these growers. So I agree with
10 you. We don't have much time for the growers to express
11 themselves and that should be our emphasis.

12 MR. MONAHAN: Thank you, Your Honor.

13 ADMINISTRATIVE LAW JUDGE: You may proceed.

14 ***

15 BY MR. MONAHAN:

16 Q. Mr. Gamache, first of all, I'm just glad
17 we've got some Toppenish growers here. Welcome to...

18 A. Glad to be here, glad to be here.

19 Q. Welcome to the big city. I'm not an
20 expert in graphic design, but if I were to look at the
21 letterhead of the farm, does it look like you have more
22 than just hops?

23 A. Hops, grapes, and apples, yes.

24 Q. Okay. You're the diversified grower
25 we've heard about.

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1 A. One of them, I bet, yeah.

2 Q. And I don't want to get into the net
3 worth issues, but in this day of depressed prices below
4 the cost of production, is it fair to say that your
5 family farm is fairly well poised to last through some
6 of these dips in the market?

7 A. I'd like to think we are.

8 Q. You've been to Germany, you have a first-
9 hand familiarity with the...

10 ***

11 MR. MOODY: Your Honor...

12 ADMINISTRATIVE LAW JUDGE: Mr. Moody?

13 MR. MOODY: Your Honor, I think -- this kind
14 of objection that Mr. Monahan is, in effect, testifying
15 that costs are -- returns are below the cost of
16 production, that isn't -- if he wants to voir dire the
17 witness on his cost production, or his returns are, that
18 fine, but I don't know that -- it's kind of a general
19 statement, is it even true? You know, farming is tough
20 in some years and not tough in other years, so I'd just
21 -- I'm concerned about that. It's appropriate to ask
22 what his own personal experience is.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Moody. Mr. Monahan, I think Mr. Moody's correct. Even
25 though there's been a lot of testimony that you have

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1 summarized, if you would, relate it to this grower.

2 ***

3 BY MR. MONAHAN:

4 Q. I was hoping to spare this grower, but
5 I'm happy to ask him. Let's talk about 2002.

6 A. Okay.

7 Q. That was the largest production your
8 family farm had ever produced?

9 A. In terms of alpha production, yes.

10 Q. Okay. Do you -- as you sit here today,
11 can you recall at the start of the 2002 season, what
12 percentage of your crop had been sold ahead?

13 A. As far as pounds of alpha, it's hard to
14 say. Acres of hops, more than two-thirds.

15 Q. Okay. And for pounds of alpha, less than
16 half? Does that sound fair?

17 A. That's probably about right, yeah.
18 Somewhere in there. Our highest producing acreage was
19 the acreage that wasn't contracted, so...

20 Q. Okay. Mr. Carswell has asked these
21 questions about the responsible grower not going into
22 the season in this day of oversupply that we've heard
23 testimony about, about perhaps not being responsible
24 going into the season unless you're contracted. Do you
25 think you were being responsible in '02, even though

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1 less than half your alpha pounds had been contracted?

2 A. I don't know if I agree with the word
3 responsible. I don't really feel like I have an
4 obligation to be responsible to anybody other than our
5 own individual farm. I'd love to see my neighbor do
6 great, but my primary concern is my wallet, I guess is a
7 way of putting it.

8 Q. And to make your wallet as thick as
9 possible, you -- your family farm elected to produce as
10 much as possible in '02 and then to test the spot market
11 at the conclusion of the growing season.

12 A. We made the judgment at the beginning of
13 the season that we thought we felt we'd be able to move
14 a portion of the -- enough of the crop at a decent
15 enough price to make it worth our while.

16 Q. How did you do?

17 A. It wasn't a great year, but we got by.

18 Q. Sell some hops for less than the cost of
19 production?

20 A. We did. I will say we did.

21 Q. Okay. Of the 50 percent of your alpha
22 hop -- crop, excuse me, alpha production that was sold
23 on spot market, what percentage of that was less than
24 the cost of production?

25 A. Ooh, that would be hard to say.

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1 Q. Was it most of it?

2 A. I wouldn't say most.

3 Q. Okay. Significant percent?

4 A. A significant percent. But possibly not
5 at -- it might have cost us more to idle those acres
6 than to actually grow them and sell them for less than
7 the cost of production. It costs you money to not grow
8 them also is my point, I guess.

9 Q. Right. So you heard the theory espoused
10 that sometimes to lose less money, you grow more?

11 A. That would make sense, yeah.

12 Q. So you're the guy we've heard about. And
13 even if that means selling those hops for less than it
14 cost you to produce them, because you can spread the
15 loss over more...

16 A. Well, you look at your costs and what
17 it's going to cost you to store them and process them
18 and sit on them, I mean, everything has a cost. You
19 figure out what -- where you come up ahead, or at least,
20 less behind.

21 Q. And when you've made that decision to
22 plant all those acres, you end up having a financial
23 incentive, if not requirement, to bring those to market
24 and sell them for whatever you can. Is that right?

25 A. Well, we don't have -- not for whatever

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1 we can. The -- we looked at the prices being offered
2 and we made the judgment that it would be in our best
3 interest to move the hops as opposed to processing them
4 and sitting on them.

5 Q. Are you comfortable telling us what the
6 lowest amount you accepted for...

7 A. I don't want to get too proprietary.

8 Q. Okay. What percentage of your
9 anticipated '04 alpha production is contracted right
10 now?

11 A. I'll say not much. I'll also say I have
12 no idea, as far as alpha, what we're going to be growing
13 next year.

14 Q. Okay. If you were to assume that you
15 produced the same in alpha next year as you did this
16 year, what percentage would be contracted for '04?

17 A. Oh, I estimate maybe half of it.

18 Q. Okay. We talk about '02 being the year
19 in which your family farm produced the most in terms of
20 alpha. Was that also the high water mark for your
21 acreage?

22 A. No.

23 Q. Okay. Would it be safe to say that your
24 family farm elected not to participate in the voluntary
25 alpha reductions that we've heard about in the industry?

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1 A. It would be safe to say, yes.

2 Q. In fact, you increased your alpha in '02?

3 A. We had a better crop, but we didn't
4 increase our acreage. We had a better producing crop.
5 Our family farm has been stable throughout the '80s and
6 the '90s. We hadn't grown much until just the last
7 year, so...

8 Q. You indicated that the bottom fell out of
9 the Perle market in Germany?

10 A. Well, that was just an example. Yes, the
11 Germans made the decision that .50 a pound just wasn't
12 going to cut it for the Perles and you've seen a lot of
13 them come out -- I don't know -- at it's peak, I bet it
14 was near a third of their crop at some point in time and
15 now I would say it's considerably less than that.

16 Q. So there was a significant oversupply of
17 the Perle crop on the world market?

18 A. There was.

19 Q. Is that an aroma or an alpha variety?

20 A. An aroma.

21 Q. Do you read the Barth report?

22 A. Not the most current one, no.

23 Q. Okay. Do you generally read it?

24 A. I try to. And I've seen it floating
25 around. I just haven't gotten my hands on it yet.

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1 Q. Are you aware of cause in Germany for
2 there to be a reduction in alpha production from German
3 farmers?

4 A. Yeah, but I've heard that for the last
5 three or four years running.

6 Q. Same as you've heard in the United
7 States?

8 A. Same as I've heard in the United States.

9 Q. Okay. Are you aware of any government-
10 sponsored grubbing grants in Germany?

11 A. I don't know the specifics. I know that
12 they are subsidized to a greater degree than we are.

13 Q. And there's an incentive for German
14 farmers to reduce alpha production from a government
15 perspective?

16 A. I'm not aware of the nature of the
17 program.

18 ***

19 MR. MONAHAN: Okay. That's all I have, Your
20 Honor.

21 ADMINISTRATIVE LAW JUDGE: Are there any other
22 questions for Mr. Gamache from people who are here in a
23 position in favor of a marketing order? Now I'd like to
24 turn to neutrals. Are there any questions from
25 representatives of USDA for Mr. Gamache? Dr. Hinman.

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1 MR. GAMACHE: Large grower.

2 ***

3 BY DR. HINMAN:

4 Q. I didn't even get to ask. Okay, thank
5 you very much. Oh, there was a name of a variety that I
6 wasn't sure I heard correctly. Was it Symphony?

7 A. Yes.

8 Q. Could you spell that into the record?

9 A. Probably not, no. It's -- I believe it's
10 spelled like you would normally spell symphony.

11 Q. The music?

12 A. Yeah, the music.

13 Q. Okay. Thank you very much.

14 ***

15 ADMINISTRATIVE LAW JUDGE: And just to help
16 the typist, in case it's not the same typist that will
17 do the other days of the hearing, how is Perle spelled?

18 MR. GAMACHE: P-e-a-r-l-e, I believe. No?

19 MR. ROY: No a.

20 MR. GAMACHE: Oh, just p. You can't ask me
21 these sort of questions.

22 ADMINISTRATIVE LAW JUDGE: Is it P-e-r-l-e?

23 MR. GAMACHE: Ask these gentlemen. I'll agree
24 with whatever they say.

25 MR. ROY: P-e-r-l-e.

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1 MR. GAMACHE: Okay.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.
3 Are there any other questions for Mr. Gamache? Is there
4 any objection to the admission into evidence of his
5 statement which is on Exhibit 59, 5-9? There being
6 none, Exhibit 59 is hereby admitted into evidence.
7 Thank you, Mr. Gamache.

8 MR. GAMACHE: My pleasure.

9 ADMINISTRATIVE LAW JUDGE: You may step down.
10 Would you hand this to the court reporter?

11 MR. GAMACHE: Sure.

12 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
13 Moody, you may call your next witness.

14 MR. MOODY: Kevin Riel.

15 ADMINISTRATIVE LAW JUDGE: Thank you. Let's
16 go off record while the exhibits are distributed.

17 ***

18 [Off the Record]

19 [On the Record]

20 ***

21 ADMINISTRATIVE LAW JUDGE: Let's go back on
22 record. We're back on record at 1:36. I have marked
23 Mr. Riel's statement as Exhibit 60, and Mr. Riel, would
24 you please state and spell your name?

25 MR. RIEL: My name is Kevin G. Riel.

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1 K-e-v-i-n, middle G., R-i-e-l.

2 ADMINISTRATIVE LAW JUDGE: Mr. Riel, would you
3 raise your right hand?

4 ***

5 [Witness sworn]

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you. Would
8 you like to begin by reading your statement?

9 MR. RIEL: I'll begin just with a brief
10 introduction. I'm the product of two hop-growing
11 families in the Yakima Valley and for those keeping
12 score, I'm a hundred percent French. I grew up on my
13 paternal grandparents' farm in Harrah on the Yakima
14 Indian Reservation. With the exception of years spent
15 in college, I have been there the whole time. Since my
16 full-time involvement with the industry, I've tried to
17 be active in the industry. I've spent nine or ten years
18 on the Washington Hop Commission. I'm a past chairman
19 of the Washington Hop Commission. I'm the current vice
20 president of the Hop Research Council, which is an
21 organization for growers, handler, and brewer to conduct
22 hop research. And I also have involvement with the
23 local financial -- Ag Financial Institution board of
24 directors.

25 ADMINISTRATIVE LAW JUDGE: Thank you. That's
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1 very helpful. While you're giving us the background
2 information, do you want to answer the questions that
3 Dr. Hinman will ask you?

4 MR. RIEL: Large.

5 ADMINISTRATIVE LAW JUDGE: And would that be
6 true even of just your hop production?

7 MR. RIEL: Correct.

8 ADMINISTRATIVE LAW JUDGE: All right. You may
9 proceed with your statement.

10 MR. RIEL: "The purpose of my testimony is to
11 inform the USDA of my opposition to the proposed hop
12 marketing order. My family has been growing hops for
13 over 55 years in Washington state and experienced its
14 greatest losses at the end of the last hop marketing
15 order. I do believe some growers did benefit from the
16 last order, however, all growers did not. In my
17 opinion, it was extremely inequitable. The result of
18 this was that my family was forced to idle all of our
19 hop acres for a term of three years, all the while
20 holding base allotment for these acres. We started our
21 recovery from this position in 1987 with only half of
22 our hop acreage in production. Since that time, under
23 the free market system, we slowly improved our situation
24 and in my opinion, have flourished. Initially, we were
25 able to purchase or lease land and replace our lost hop

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1 acreage. In 1997 we purchased a neighboring hop
2 operation to expand our business. Since that time we
3 have continued to invest in the hop industry by adding
4 and improving large capital assets and increasing the
5 quality of the product that we deliver to our customers.
6 I do recognize the challenges that this industry is
7 facing, however, I feel that these are best dealt with
8 by individuals making decisions that are best for
9 themselves. I do not wish to have a committee of my
10 fellow growers deciding my family's fate in this
11 industry and I believe I am not qualified to make
12 decisions for them. Each grower must be allowed to find
13 his or her solution to the current and future issues in
14 the hop industry free and clear of involvement from
15 others. In closing, although opinions may vary about
16 the success or failure of the last hop marketing order,
17 I believe that human nature will lead any new marketing
18 order to the same consequences. No amount of
19 questioning or cross-examination will change my opinion
20 that the pain and scars suffered by my family are a
21 result of the failure of the last order." And I've
22 signed my statement Kevin Riel, President of Double R
23 Hop Ranches, 8491 Branch Road, Harrah, Washington,
24 98933.

25 ADMINISTRATIVE LAW JUDGE: Thank you. And
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1 Harrah is spelled H-a-r-r-a-h.

2 MR. RIEL: That's correct.

3 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

4 Riel. Is there anything you'd like to add before I open
5 the floor to questions?

6 MR. RIEL: No, I'm ready.

7 ADMINISTRATIVE LAW JUDGE: All right. First
8 of all, Mr. Moody, do you have questions for Mr. Riel?

9 ***

10 KEVIN G. RIEL,
11 having first been duly sworn, according to the law,
12 testified as follows:

13 BY MR. MOODY:

14 Q. Yes, thank you. What's happened to your
15 production during the sort of period beginning with the
16 introduction of the super high alpha varieties?

17 A. Since the time that the super high alphas
18 were introduced, we have slowly converted more and more
19 of the acreage on our farm from the older traditional
20 variety to super high alpha varieties, and our acreage
21 has grown since that time.

22 Q. And you're both aroma and hops now?

23 A. That's correct.

24 ***

25 ADMINISTRATIVE LAW JUDGE: Mr. Moody, both
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1 aroma and alpha?

2 ***

3 BY MR. MOODY:

4 Q. Oh, I'm sorry, aroma and alpha?

5 A. That's correct, yes.

6 Q. And do you have contracts for '03?

7 A. Yes. I had contracts for '03.

8 Q. If you had done a calculation to
9 determine whether if the order goes into effect, you
10 might need to buy base?

11 A. It's my opinion that I will need to buy
12 base, yes.

13 Q. That you will?

14 A. Yes, I will.

15 Q. Okay. So do you have a -- I gather
16 you're opposed to in part on that score, is that...

17 A. That is one of the reasons why I'm in
18 opposition, yes.

19 Q. Okay. Have you made recent capital
20 investments in your hops operation?

21 A. Yeah, we have been investing in our --
22 especially our production assets over the last several
23 years, new and improved drying facilities, baling
24 facilities, hop top cutters, improvement in our picking
25 facilities. In the early part of the time period that

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1 we're talking about, we went through a major conversion
2 to drip irrigation from conventional rill irrigation,
3 also.

4 Q. And do you have an opinion on what the
5 period should be for determining initial allotment bases
6 if the order goes into effect?

7 A. If the order would go into effect -- I've
8 heard testimony from a lot of people about what would be
9 fair and equitable and I'd have to agree with the
10 statement that Mr. Gamache just made and that -- I feel
11 it's very hard to build any hop marketing order that is
12 going to be fair to everyone. I recognize that fact, I
13 do not fault the proponents committee. I think they
14 tried very hard to accomplish that. But in my view,
15 it's impossible to pick a time period that's fair to
16 everyone. I guess I would view that problem from the
17 perspective that I think a snapshot should be taken of
18 the industry at the current time and some sort of
19 approximation of what the industry is now should be made
20 and so I would tend to favor year's closer to the
21 current one versus clear back to 1997.

22 ***

23 ADMINISTRATIVE LAW JUDGE: Mr. Moody, before
24 you ask your next question, let us change the tape at
25 1:43.

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[Off the Record]

[On the Record]

ADMINISTRATIVE LAW JUDGE: Thank you. We're
back on record at 1:43. Mr. Moody?

BY MR. MOODY:

Q. Is there anything unique or unusual from
a climate or production or whatever marketing standpoint
that would make '03 an unsuitable year for -- to use as
sort of the snapshot of where the industry is currently?

A. I can't think of any reasons that you
have mentioned that would make it any different than
other years, no.

Q. I think you'd probably agree that '01 and
'02 might unsuitable because there were people who
participated in those voluntary set-asides?

A. I can understand the issues with the
years 2001 and 2002, yes.

Q. Or certainly they ought to maybe get some
kind of -- if those years were to be included, ought to
get some credit for, you know, trying to do the good
neighbor thing.

A. In theory, yes. I'd like to know exactly
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1 how that would work out, but in theory, yes, I'd agree
2 with that, too.

3 Q. Okay. And as far as the year for
4 determining voter eligibility, which I think we've
5 gotten kind of finally resolved, so I'll just ask one
6 question on that. Do you think that eligible voters
7 should be limited to those who are commercial producers
8 in the year for which most recent data is available
9 prior to the referendum?

10 A. I'm going to say that I would -- I'm
11 going to honestly say that I would've answered yes to
12 that, but after listening to Mr. Tobin's testimony, I am
13 unclear as to how to answer that right now.

14 Q. Okay, all right. And what -- in the
15 event the marketing order were to go into place and a
16 sales restriction go into place on the US production, is
17 it your belief that the other producing areas in the
18 world would -- or what do you believe would happen in
19 the other producing areas of the world regarding alpha
20 acids?

21 A. I've been sitting here over the last 10
22 days, so -- and we've talked about these issues from
23 both sides. I think it's very hard to deny the fact
24 that could happen. As to what extent, obviously, we've
25 been arguing back and forth about that all week, but I

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1 think it's extremely hard to deny the fact that that
2 could happen. If we want to argue about how much it
3 could happen or not, that's open to discussion, but yes,
4 I believe it could happen.

5 ***

6 MR. MOODY: Thank you very much.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Moody. Other questions for Mr. Riel? Mr. Carswell?

9 ***

10 BY MR. CARSWELL:

11 Q. Just very brief, Mr. Riel. Have you done
12 some -- have you traveled to China, did you -- have you
13 said?

14 A. Yes, I have traveled to China.

15 Q. And kind of looked at the Chinese hop
16 industry?

17 A. Yes, I went to China in 1992. I didn't
18 see the Chinese hop industry, but I was on an
19 agricultural trip to China and got a general overview of
20 Chinese agriculture and saw what was going on at that
21 time.

22 Q. Do you think that in terms of it being a
23 potential competitive threat, do you see the Chinese hop
24 industry, based on what you know to be a potential
25 competitive threat?

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1 A. What's interesting, when I was there I
2 thought I saw a snapshot of at least, what I've read in
3 history books of what America was possibly in the '30s
4 or '40s. Here was a country experiencing a tremendous
5 boom in its conversion from essentially zero technology,
6 by my definition, to emerging technology. I was able to
7 view a lot of the apple acreage, particularly around
8 Beijing area and field after field after field of apple
9 varieties and at the time that I was there, exports to
10 the US really weren't a factor. Since that time,
11 they've become a fair factor in the apple market, in my
12 opinion. And I can understand how that happened based
13 on what I saw when I was there. This was a country --
14 they called it -- you know, everyone calls it the
15 sleeping dragon. It was poised and ready to go and so I
16 can understand how -- maybe right now at this particular
17 point in time China can, you know, barely just satisfy
18 its domestic demand, but I can easily picture a scenario
19 in my mind how they could be a major player in the
20 global alpha market in the future.

21 Q. Are apples a fairly sophisticated fruit
22 to grow?

23 A. I would say there's some degree of
24 sophistication there. I think the most sophistication
25 in the apple -- producing apples occurs post-harvest in

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1 the storage and packing of that crop.

2 Q. Are you aware of any US exports to China?
3 Hop exports?

4 A. You know, I don't have an intimate
5 knowledge of that. It's my opinion based on what I've
6 heard that at times over the years that has occurred
7 when they haven't been able to satisfy their domestic
8 demand. At this time, this year, I honestly don't know
9 if that's occurring or not.

10 Q. I believe I saw in one of the reports --
11 and we can pull it out if we need to, but that a tenth
12 of US exports were to Asia and presuming that -- just
13 presuming that is correct, would you see the Chinese hop
14 industry as more of a threat, perhaps, with respect to
15 that Asian market as compared to other markets?

16 A. Well, that would make sense to me since
17 they're closer to those markets than we are. Their
18 transportation costs should be lower than ours would be.

19 ***

20 MR. CARSWELL: That's all I have. Thanks.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
22 Carswell. Yes, Dr. Tweeten.

23 ***

24 BY DR. TWEETEN:

25 Q. You indicated, Mr. Riel, that you have
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1 made some economic progress over the years? Is that
2 correct?

3 A. I feel like we have, yes.

4 Q. Have you just been plain lucky or is this
5 luck -- what accounts for this -- what I'm really
6 getting at is, is this something unique to you or is
7 this something that a capable person, operator in the
8 hop industry could do?

9 A. I'm sure luck always has a certain amount
10 of it. If I was going to pick the most important
11 factor, I think it's just plain hard work, an extreme
12 amount of it. Hopefully, some sound management
13 decisions went into that picture, also.

14 Q. So you feel this is within reach of other
15 growers who are willing to put in hard work to make a
16 successful industry?

17 A. Well, obviously, access to capital would
18 have to enter into that equation, too. If we kept that
19 constant, I believe so, but access to capital and the
20 availability of capital would enter in, also, yes.

21 Q. But is this, too, available to others if
22 they're competent operators?

23 A. I suppose it's available to everyone.

24 Q. Just one other quick question. One of
25 the purposes of the marketing order that's proposed to

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1 is to deal with the risk in the industry. Isn't it true
2 that after buying bases to keep your production going,
3 the possibility that the marketing order would be
4 terminated -- can't that actually increase your risk
5 rather than decrease it?

6 A. You know, I've heard a couple different
7 times -- testimony throughout the last few days about --
8 growers have talked about buying base clear up through
9 the end of the last order and still paying for base
10 after the end of the last order and you know, when I
11 heard that testimony, it occurred to me that -- I think
12 the continuation referendums are very important to this
13 order, but a grower would always have to evaluate the
14 potential for the order to be terminated at the onset of
15 the next termination referendum and so sure, that would
16 increase -- it would add to the risk, because that would
17 have to factored into each grower's equation as to
18 whether or not he wants to purchase additional base.
19 You would have to have a -- you know, whatever degree of
20 belief that it's going to be there for the length of
21 years that you want to amortize that cost out through.

22 ***

23 DR. TWEETEN: Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.

25 Tweeten. Are there other questions from those who are

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1 here in a position against a marketing order? There are
2 none. Now for -- from those who are here in a position
3 in favor of the order? Yes, Mr. Monahan.

4 ***

5 BY MR. MONAHAN:

6 Q. Thank you, Your Honor. Do you think, Mr.
7 Riel, that the existence of the continuation referendum
8 might have an effect on the price of base?

9 A. You know, I think it's going to depend in
10 the feeling of the industry at the time that it's
11 approaching or being -- if growers feel that there is
12 possibly a -- a little dissatisfaction with a potential
13 order, I think it would definitely lower the value of
14 the base. If growers feel, amongst themselves, that
15 there's strong support for it, it -- I would think would
16 raise the value of base.

17 Q. Because if there's support for the
18 program and if there's widespread industry consensus
19 that the program is working, then base would actually
20 have some value, wouldn't it?

21 A. I would believe that to be true, yes.

22 Q. I appreciate your written remarks as well
23 as your testimony and it sounds like in your family's
24 situation the end of the last marketing order was real
25 tough.

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1 A. It was very tough.

2 Q. And I imagine -- I don't want to get too
3 personal about it, but I imagine -- was this in the last
4 -- the early '80s, the years where we heard testimony
5 that the marketing order, perhaps, wasn't operating the
6 way it should have?

7 A. It was in the mid-'80s.

8 Q. We've heard testimony about how it was
9 greed of the industry that led to the demise -- again,
10 without trying to get too personal, is it your belief
11 that it was the greed of the industry that led to your
12 family's situation?

13 A. My testimony during this time period
14 would center around -- I was in college at that time,
15 and it would center around listening to conversations
16 that my father and my uncle and my grandfather had, so
17 -- I don't know if you'd call this hearsay or what, but
18 I can guarantee you that I would accurately represent
19 their feelings and words like greed were constantly
20 mentioned, the committee was mentioned a lot. As a
21 grower, sitting there -- back up a little bit. I would
22 characterize the ability to market hops at that time in
23 our family's life as possibly being a little less
24 sophisticated than it is right now. Maybe the decision-
25 making process was a little less sophisticated, so if

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1 you can picture a family in that scenario relying on the
2 wisdom of the central committee to accurately set
3 saleable and seeing yourself in a position where you're
4 holding this base that is supposed to give you something
5 and what it's supposed to give you, as I've heard
6 before, it's your piece of the pie. This is what people
7 are telling me I should be voting in the favor of this
8 for, so I have my piece of the pie. So my family
9 expects it's going to be able to use its piece of the
10 pie. Well, what happens when the pie all of a sudden
11 get way bigger than it's supposed to? My piece of the
12 pie doesn't count anymore and this happened year after
13 year after year. It leaves an extremely bitter taste in
14 my family's memory. And so this piece of the pie that I
15 should be voting for this for, so I can protect my piece
16 of the pie, I'm not convinced that I will always have my
17 piece of the pie, because we didn't last time.

18 Q. The pie went away when the marketing
19 order was terminated?

20 A. It didn't go away. It got about two or
21 three times bigger than it should have.

22 Q. When your family was forced to idle all
23 of their hop acres, they were still hop growers, weren't
24 they?

25 A. You know -- and once again -- you know,

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1 I'll admit that Mr. Tobin's testimony raises some
2 questions in my mind. Yeah, we did feel that we were
3 still hop growers, but we felt extremely isolated from
4 the industry at that time. And I think we thought we
5 were the -- in our opinion, we were the only ones that
6 thought we were hop growers. The rest of the industry
7 had abandoned us. That's my personal opinion.

8 Q. I'll bring you back up more to recent
9 years, if you don't mind. The hop alliance and the set-
10 aside programs...

11 A. Um-hum.

12 Q. Are those things that you voluntarily
13 participated in?

14 A. Our family was -- or were members of the
15 hop alliance. We paid dues into the hop alliance. We
16 wanted to support the industry in any way we could. We
17 reported our acreage projections or our upcoming plans
18 to the hop alliance. I would say that what we felt we
19 needed to do or had to do probably didn't fit into the
20 scope of what the alliance would've liked us to do, but
21 we wanted to do what we felt we could at the time. And
22 the set-aside program -- that's, I guess basically, year
23 2001 -- in 2002 during the time of the set-aside
24 program, I have and had some real issues with the set-
25 aside program and our family, at that time, in 2002 was

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1 faced with the decision that we knew we were going to
2 idle hop acres. We had 70 acres of Nuggets that we felt
3 were -- the chances of recovering the cost production on
4 those was very low and we knew we were going to idle
5 them. But I had -- I to this day still feel that the
6 Washington state set-aside program was morally wrong.
7 In my opinion, that was a taking from contracted growers
8 and giving to non-contracted growers. I stated my
9 opinion completely through that process and was open
10 about it all the way through. And when the forms came
11 out for the set-aside, we filled out our acreage that we
12 had set aside -- that acreage would've been set aside
13 with the program or without the program. And it's just
14 like, for instance, the apple market loss programs that
15 the apple industry's had in the last couple of years. I
16 think those are extremely, extremely, bad ideas. I do
17 not think it helps the apple industry at all. Did our
18 family get a check to pass to use the program? Yes, we
19 did. But I think we would all be much better off if we
20 hadn't. So our family filled out the 70 acres -- filled
21 out the form for the set-aside program, all the while
22 saying that I felt that program was wrong and immoral.
23 So that was our position during that time.

24 Q. That was 2002?

25 A. I believe so.

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1 Q. Would you agree, Mr. Riel, that in 2002
2 there was an oversupply of alpha acid?

3 A. I would agree with that.

4 Q. Would you agree that it was in the best
5 interest of the industry to reduce the alpha acid?

6 A. I think I would answer that in saying it
7 was in the best interest of the industry to reduce alpha
8 acid, but I have no problems with any grower doing as
9 they see fit, whether that be removing acres, planting
10 acres -- each person needs to be able to do what's best
11 for their family. Everyone in this room has
12 responsibilities to people within their family structure
13 and I respect that.

14 Q. Is that -- do you mean that it was in the
15 best interest of the industry to reduce alpha acid, but
16 you weren't going to do so, because that was in the best
17 interests of your family?

18 A. I can say that that was probably correct,
19 yes.

20 Q. You indicated that in your opinion, you
21 would have to buy base?

22 A. That's my opinion, yes.

23 Q. Can you tell me what year you used for
24 your base allotment in order to get there?

25 A. I've done that a couple of different ways

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1 and I probably need to go home and redo it after sitting
2 through the hearings, but I think the year that our
3 family would use would probably be 2001.

4 Q. Okay. What was your acreage in 2001?

5 A. I'd prefer not to answer that.

6 Q. I was hoping I could try to compute
7 whether you needed some base...

8 A. I need base, trust me.

9 Q. You're not going to give me the numbers
10 to...

11 A. No, I'm not. Sorry.

12 Q. What assumptions did you make in terms of
13 saleable quantity in order to reach your conclusion that
14 you had to reach -- buy base?

15 A. We would need to buy base at a saleable
16 level anywhere from 80 percent or below.

17 Q. Okay. Can you tell me how many aroma
18 acres you had in 2001?

19 A. I'm sorry, I will not.

20 Q. I don't get to do my math, then. I'm not
21 going to make this that easy on you.

22 A. Can you trust me that I need base?

23 ***

24 MR. MONAHAN: I would trust you. I have no
25 reason to believe you're -- that you believe that you

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1 would need base. And Your Honor, I hesitate. I'm
2 trying -- I know we've respected all proprietary
3 objections to this point in time. I'm thinking out loud
4 here. I'm trying to determine how important it is to
5 the issue to determine whether and how much base would
6 have to be purchased and what assumptions have been
7 made. Could we have a minute off the record for me to
8 confer?

9 ADMINISTRATIVE LAW JUDGE: Yes, let's go off
10 record at 2:04.

11 ***

12 [Off the Record]

13 [On the Record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: We're back on
16 record at 2:04. Let's take a 10 minute break. Please
17 be back and ready to go at 2:15.

18 ***

19 [Off the Record]

20 [On the Record]

21 ***

22 ADMINISTRATIVE LAW JUDGE: We're back on
23 record at 2:17. I just want to announce the time
24 consumed today so far. Those in a position in favor of
25 a marketing order have consumed an hour and a half, and

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1 those against a marketing order have consumed two hours.
2 I still have a part of one day to report that I finished
3 adding up yet. All right, Mr. Monahan, you may ask your
4 next question.

5 ***

6 BY MR. MONAHAN:

7 Q. Thank you, Your Honor. I don't need to
8 know about your varieties, Mr. Riel. Or your acreage.
9 But let me see if we can do a little bit of math. Your
10 indication, or your belief, based on your calculations
11 is that at any saleable of less than 80 percent, your
12 farming operation, you'd be required to buy some base.
13 Is that right?

14 A. That's my belief, yes.

15 Q. You were here for the testimony of Dr.
16 Jekanowski, were you not?

17 A. Yes, I was.

18 Q. And he had a couple of models or examples
19 where he tried to estimate the average or the potential
20 saleable quantities that might be set in the first year.

21 A. Yes.

22 Q. One of those was 75 percent, is that
23 right?

24 A. That could be right. I don't remember
25 exactly. Too many numbers.

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1 Q. Okay.

2 A. For too many days.

3 Q. I'll represent to you one of the
4 indications where -- that it would be 75 percent. The
5 other 55 percent, depending on how the administrative
6 committee dealt with what he believed to be the carry-
7 over inventory. Okay? Let's assume that it were cut
8 back to 75 percent.

9 A. Okay.

10 Q. And that -- do I understand, then, that
11 you would have to buy five percent additional base?

12 A. I believe so.

13 Q. Okay. And did you calculate what your
14 base would be in terms of actual alpha? Pounds of
15 alpha?

16 A. Yes, I did.

17 Q. Are you able to tell me that?

18 A. No, I would not.

19 Q. So we're not going to be able to come up
20 with a value of potential base, are we? That you might
21 have to pay?

22 A. You'd have to value it by the pound at
23 any rate, anyway.

24 Q. And you're not going to tell me the
25 pounds?

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1 A. No, I would not.

2 Q. Let's talk about some other values. You
3 heard Ms. Brulotte's testimony this morning, did you
4 not?

5 A. I was in and out of the room. I was
6 working on the grower list a little bit, so I heard bits
7 and pieces.

8 Q. I'll just check a couple of values with
9 you. What's a tractor cost?

10 A. What kind of a tractor?

11 Q. What kind of tractors do you use in your
12 farming operation?

13 A. We use anything from tractors that would
14 \$60,000 down to a used tractor that you get for \$3500.

15 Q. Okay. What would a -- you say you've
16 invested in a new baling machine?

17 A. That's correct.

18 Q. What does something like that cost?

19 A. Well, it would depend on the type of
20 baling room that you built. I'm sure you could probably
21 do it for as low as maybe 200,000 and as high as
22 600,000.

23 Q. If you -- you've heard some testimony
24 that base in the early years of a marketing order could
25 have some value, perhaps little value, it's just hard to

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1 say, is that right?

2 A. Yeah, I've heard that.

3 Q. Would you agree that in the context of
4 all of the expenses that face hop farmers, that a five
5 percent increase in base could very well be
6 insignificant in the grand scheme of things?

7 A. I wouldn't call it insignificant and the
8 other issue I have with the way value of base has been
9 presented is that I can understand the scenario where if
10 a committee chose to essentially, set a saleable so high
11 that we -- it wasn't restricting anything, that base
12 would have a negligible value of maybe zero. The
13 problem with that is if we're under that scenario,
14 myself as a grower, knows that sooner or later, we have
15 to use the volume controls of this order to get
16 something out of it. So if I'm going to have to buy
17 base and I know this is coming in the future, it's
18 probably in my best interests to get plenty of base at
19 the start. Now, I know I've got some people sitting
20 back there in the room with me that all feel they need
21 base, too. So initially, we all start to go out and try
22 to acquire this base that we think that we may need
23 later on when, if possible, volume control has started
24 and we're bidding against one another for this base. So
25 I cannot see how we can have our cake and eat it, too.

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1 How can we have base be worth zero and have a program
2 that works? We can't. So I find it hard for -- to
3 believe that base would have negligible value. I can't
4 get my mind of that concept, sorry.

5 Q. In terms of positioning to maximize
6 potential base, is that one of the reasons that you
7 expanded alpha acid production?

8 A. No, it's not.

9 ***

10 MR. MONAHAN: I have nothing further, Your
11 Honor.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Monahan. Other questions for Mr. Riel from those who
14 are here in a position in favor of a marketing order?
15 Now, the neutral parties. Those from USDA? No
16 questions. Any questions for Mr. Riel from anyone?
17 There are none. Mr. Riel, is there anything else you'd
18 like to add?

19 MR. RIEL: No, there's not.

20 ADMINISTRATIVE LAW JUDGE: All right, thank
21 you. I don't recall -- Mr. Moody?

22 MR. MOODY: Yes, our next witness is here.

23 ADMINISTRATIVE LAW JUDGE: All right. I don't
24 recall whether I admitted into evidence Exhibit 60. I'm
25 going to do it again just in case I didn't. Is there

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1 any objection to the admission into evidence of Exhibit
2 60? There is none. Exhibit 60 is hereby admitted into
3 evidence. Thank you, Mr. Riel. You may step down.

4 MR. RIEL: Thank you, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

6 MR. MONAHAN: Your Honor, Mike Hogue, who was
7 one -- is one of the growers who intends to provide
8 testimony in support of the marketing order has arrived.
9 He's not able to stay until the end and if it were
10 possible to shuffle him in, the proponent's committee
11 would appreciate it.

12 ADMINISTRATIVE LAW JUDGE: All right, thank
13 you. Mr. Moody, would you prefer to go ahead and call
14 your next witness before I call Mr. Hogue?

15 MR. MOODY: No, let's have Mr. Hogue. Thank
16 you.

17 ADMINISTRATIVE LAW JUDGE: All right. Mr.
18 Hogue, if you'd come forward. And let's go off record
19 for just a moment at 2:25.

20 ***

21 [Off the Record]

22 [On the Record]

23 ***

24 ADMINISTRATIVE LAW JUDGE: All right, we're
25 back on record at 2:26. Mr. Hogue, I've marked your

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1 statement as Exhibit 61. Would you state your full name
2 and spell your name for the record?

3 MR. HOGUE: Michael Hogue, M-i-c-h-a-e-l
4 H-o-g-u-e.

5 ADMINISTRATIVE LAW JUDGE: Thank you. Would
6 you raise your right hand, please?

7 ***

8 [Witness sworn]

9 ***

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Hogue. Do you want to begin by reading your statement?

12 MR. HOGUE: Yes, I do.

13 ADMINISTRATIVE LAW JUDGE: All right, you may
14 proceed.

15 MR. HOGUE: "My family and I have grown hops
16 near Prosser since the 1940s. For 20 years I owned and
17 operated Hogue's Cellars Winery in Prosser, Washington.
18 Having sold Hogue's Cellars Winery in 2001, we are now
19 involved only in farming. We're diversified growers
20 farming hops, apples, wine grapes, and juice grapes. I
21 produced hops under the 1966 hop marketing order and
22 also produced mint under the mint marketing order. I
23 sold my mint base in 1990 and I found working with my
24 fellow hop growers under the hop marketing order to be a
25 more stable, profitable, and easier to bank situation

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1 than an unstable environment we're experiencing without
2 the hop marketing order. Under the hop marketing order
3 I sold hops through four contracts and had little
4 inventory. Since the order was removed and I have
5 received fewer and fewer forward contracts and have been
6 forced to bear most the inventory burden in the hop
7 supply system. We have 225 acres of land in hop
8 trellis, but have only twined 375 acres in the last two
9 years. We have elected not to grow these acres as part
10 of our grass roots effort to balance supply and demand.
11 While we laid idle 150 acres in 2002 and 2003, other
12 growers in this room saw our acreage reduction as a
13 chance to grow more hops rather than a chance to balance
14 supply and demand. They received less than a dollar for
15 these hops. The instability in the balance of supply
16 and demand makes it harder and harder to conduct the
17 business of farming. Credit administrators at Key Bank,
18 US Bank, and Bank of the West have identified the hop
19 industry as a troubled industry and are in the process
20 of tightening credit terms and writing down the value of
21 inventory. They have realized that hop growers are not
22 capable of balancing supply and demand for their
23 product. Half of my career of growing and selling hops
24 has been with a marketing order in place and half has
25 been spent enduring unstable market conditions. I've

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1 seen middlemen who are not satisfied with ordinary
2 margins on the services they provide, augment their
3 profit margins by overcharging brewers and under-
4 returning proceeds to growers. I've seen end-users in
5 our hops ignore the instability of the cost of our
6 production because it is significant to their cost
7 accounting structure -- insignificant to their cost
8 accounting structure. I've seen the number of growers
9 decrease drastically and on the average, industry savvy
10 of the remaining increase exponentially. I hope to now
11 see the growers unify their efforts and balance supply
12 and demand through this proposed marketing order. I
13 know that growers have been pressured by various
14 handlers and end-users to vote against the HMO and to
15 convince others to do the same. I know this, because I
16 felt the same pressure. I believe that in a hidden
17 ballot, some growers will vote for the marketing order
18 despite their indications to the contrary today. I
19 believe this because under a marketing order they will
20 not have to fear the forms of retribution to which we've
21 all been accustomed. I believe that some growers have
22 come to support the HMO due to the content of these
23 hearings. They have seen the demeanor of the proponents
24 committee and that of the opposition. They have seen
25 that the proponents are acting on behalf of the industry

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1 and all growers equally, regardless of their current
2 avenue to the market. They have seen that there will be
3 true demand for their product that will be demonstrated
4 with profitable future contracts and competitive spot
5 pricing due to yield variances. They know that the
6 marketing order isn't about restricting supply, it's
7 about balancing supply and demand and they know that the
8 marketing order isn't about increasing prices. It's
9 about stable prices that cover the cost of growing and
10 reward the grower with an adequate profit margin for his
11 efforts. Please allow this hop marketing order to go to
12 referendum and allow the American hop growers to decide
13 their own fate." Thank you.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
15 Hogue. Questions for Mr. Hogue. Mr. Monahan?

16 MR. MONAHAN: No thank you, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: All right. Anyone
18 here in favor of the marketing order that would like to
19 question Mr. Hogue? Any here in a position against the
20 marketing order? Would you like to question Mr. Hogue?
21 Mr. Moody?

22 ***

23 MICHAEL HOGUE,
24 having first been duly sworn, according to the law,
25 testified as follows:

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1 BY MR. MOODY:

2 Q. Very quickly, Your Honor. Mr. Hogue,
3 you're an '03 producer, is that correct?

4 A. Yes. Yes, I am.

5 Q. And you said you're also a diversified
6 farmer?

7 A. Yes, I am.

8 Q. And you were able to obtain to financing
9 for your production this year?

10 A. I had to meet with the bank, yes.

11 Q. Okay. And you said you thought people
12 were pressured in connection with their vote? Could you
13 elaborate on that a little bit?

14 A. Well, just in the meeting where I heard
15 in Portland last week, I came away wondering whether the
16 brewery that spoke about a three-year contract was
17 trying to bribe me or trying to punish me if I voted for
18 or against this measure. That's the way it came across
19 to me. This is a very small business and it pits one
20 grower against another grower and it's very easy to
21 manipulate these growers and myself. It's the nature of
22 our business. It's unfortunate, but through a hop
23 marketing referendum like we have here, this marketing
24 order, I believe it will put back a little bit of power
25 in our grower structure and even the playing field.

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1 Q. Are your hops contracted this year?

2 A. Some are and some aren't.

3 Q. Do you think the marketing order will
4 help to force the brewers and dealers to sign contracts
5 for more -- a greater percent of the crop?

6 A. I have no idea what a brewer may or may
7 not do, other than I think Anheuser-Busch told us what
8 they were thinking about doing.

9 Q. And I gather you think the industry's
10 pretty competitive, fiercely competitive?

11 A. It's very competitive worldwide, yes.

12 ***

13 MR. MOODY: Good. Okay. Thanks very much,
14 Mr. Hogue.

15 ADMINISTRATIVE LAW JUDGE: Oh, don't leave
16 yet. Thank you, Mr. Moody. Anyone else for -- have
17 questions for Mr. Hogue? Anyone from USDA have
18 questions for Mr. Hogue? Dr. Hinman?

19 ***

20 BY DR. HINMAN:

21 Q. I have to inflict on you the same
22 question I have asked others. Since you, I guess,
23 recently arrived you may not have heard me ask this
24 question of others where I inquire as to a grower -- as
25 to their -- just their size in a very general sense,

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1 first related to your hop sales in a -- the most recent
2 or typical recent year -- is it below or does it exceed
3 \$750,000 and that's a measure of small or large grower
4 versus -- by the Small Business Administration.

5 A. It is above that.

6 Q. It is above that.

7 A. I would...

8 Q. And one point -- I just wanted to make
9 sure. I believe you may have read it's 225 acres of
10 land into the record. Do you mean 525, which is showing
11 on the paper?

12 A. Yes, 525.

13 Q. Okay.

14 A. Of acres of hops.

15 Q. Of hops.

16 A. Yes.

17 ***

18 DR. HINMAN: Okay. Thank you.

19 MR. HOGUE: Um-hum.

20 ADMINISTRATIVE LAW JUDGE: Thank you for that,
21 Dr. Hinman. Are there any other questions from anyone
22 for Mr. Hogue? Is there any objection to the admission
23 into evidence of Exhibit 61? There is none. Exhibit 61
24 is hereby admitted into evidence. Thank you, Mr. Hogue.

25 MR. HOGUE: Thank you.

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1 ADMINISTRATIVE LAW JUDGE: You may step down.

2 MR. MONAHAN: And thanks for accommodating our
3 schedule, Mr. Moody.

4 MR. MOODY: Now we call Eric Desmarais.

5 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
6 Desmarais, you may step forward.

7 MR. DESMARAIS: I've got a couple of
8 documents.

9 ADMINISTRATIVE LAW JUDGE: Oh, good. Let's go
10 off record while we distribute Mr. Desmarais' documents.

11 ***

12 [Off the Record]

13 [On the Record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: All right, we're
16 back on record at 2:38. I've been handed two documents
17 and we'll deal with those in just a moment. Mr.
18 Desmarais, would you please state and spell your full
19 name for us?

20 MR. DESMARAIS: It's George Eric Desmarais. I
21 go by Eric. First name's G-e-o-r-g-e E-r-i-c
22 D-e-s-m-a-r-a-i-s.

23 ADMINISTRATIVE LAW JUDGE: That last name is
24 D-e-s-m-a-r-a-i-s.

25 MR. DESMARAIS: Correct.

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1 ADMINISTRATIVE LAW JUDGE: Thank you. Would
2 you raise your right hand, please?

3 ***

4 [Witness sworn]

5 ***

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Desmarais. Mr. Desmarais, I've marked the colorful..

8 MR. DESMARAIS: Okay.

9 ADMINISTRATIVE LAW JUDGE: ...bar charts, a
10 multi-page document as Exhibit 6-2, 62.

11 MR. DESMARAIS: Okay.

12 ADMINISTRATIVE LAW JUDGE: And I have marked
13 the single sheet document entitled "Hop Marketing Order
14 Projections for Eric Desmarais" as Exhibit 63.

15 MR. DESMARAIS: Okay.

16 ADMINISTRATIVE LAW JUDGE: Do you wish to have
17 Mr. Moody ask you questions or would you like to begin
18 with your presentation?

19 MR. DESMARAIS: I'll give a brief statement
20 and kind of outlining my own personal situation and some
21 of these calculations I've gone through to estimate the
22 effect a federal marketing order would have on myself.

23 ADMINISTRATIVE LAW JUDGE: Thank you. Can
24 everyone in the back hear Mr. Desmarais? If you --
25 raise your right hand if you can or any hand. Okay,

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1 good. It's loud and clear. Thank you, Mr. -- Mr.
2 Monahan?

3 MR. MONAHAN: Are there exhibits that are
4 being handed out? Did I miss that?

5 MR. MOODY: Reggie handed them out.

6 MR. MONAHAN: Oh, okay.

7 ADMINISTRATIVE LAW JUDGE: Boy, she sure
8 doesn't favor her own group. Five people and only one
9 copy. There we go. Now you've got two copies. All
10 right, Mr. Desmarais, you may proceed.

11 MR. DESMARAIS: Okay. What I'd like to do is
12 just give a little bit of brief background of my
13 situation as a grower. I am a fourth-generation hop
14 grower. In 1996, I formed my own corporation and me and
15 my wife started farming ourselves. And we do operate
16 within a family structure with two other uncles, but we
17 are corporately separate from them.

18 ADMINISTRATIVE LAW JUDGE: In what year did
19 you and your wife begin?

20 MR. DESMARAIS: 1996.

21 ADMINISTRATIVE LAW JUDGE: '96.

22 MR. DESMARAIS: Um-hum.

23 ADMINISTRATIVE LAW JUDGE: Thank you.

24 MR. DESMARAIS: In 1996 I erected
25 approximately 50 acres of trellis and planted a

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1 proprietary super alpha acid variety for a hop merchant.
2 The second year, '97, I added 25 more acres, so I had 75
3 acres of proprietary super alpha variety.
4 Unfortunately, this variety also ended up being the most
5 susceptible variety to powdery mildew and I only picked
6 -- in '97 on my first full crop I only harvested a third
7 of a crop that year. So right off the bat, second year
8 in basically, I -- second year I lost \$200,000 on 60
9 acres of hops. That was in addition to the year before
10 of approximately of another \$250,000 of establishment
11 costs the year before. So needless to say, I was in
12 somewhat of a hole. The decision was made in late '97
13 to pull that proprietary variety out and replace it with
14 CTZ variety, which added another significant cost. So I
15 was now planting my second baby crop in as many years.
16 At this time, the debt structure that I had associated
17 with 65 -- 75 acres of hops, excuse me, was so
18 staggeringly large that I had two choices as a grower.
19 I had no more access to financing through my family and
20 I had no more access to financing through my -- through,
21 you know, additional long-term financing through my
22 bank. I worked with the hop merchant that we -- that
23 had the proprietary variety and we came up with a
24 solution to move forward and there -- for my situation,
25 there was only one -- actually, there was [sic] two

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1 solutions. One was bankruptcy, which was not going to
2 be an acceptable solution to anybody -- nor to myself.
3 The only other solution was as to one of my fellow
4 opponent growers, I guess, indicated he -- he had a good
5 way of putting it. I won't use his exact terms, but
6 basically he said you had to get -- I had to get a
7 bigger piece of bread to spread the peanut butter over.
8 He had a little different word than peanut butter, but I
9 think we all get the idea of what we're talking about
10 here. So with a -- essentially, that forced me into an
11 expansion mode right off the bat, that -- that I'm not
12 saying I wouldn't have got to eventually, or I wouldn't
13 -- you know, I'm not sitting up here saying that's the
14 only issue, but that was what forced the issue right off
15 the bat. From there on out, I slowly and steadily
16 expanded my acreage and in 2001 I took over my father's
17 farm. I also purchased some additional hop ground from
18 another grower in the Moxee area and also during that
19 year, I, along with six other growers -- I purchased a
20 minority share in Hop Union, which supplies -- which I
21 think everybody here has heard over the last nine days,
22 is kind of a small craft brewery supply -- hop supply
23 business.

24 MR. BARTON: Can we take a break for a moment?

25 ADMINISTRATIVE LAW JUDGE: Yes. Let's change

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1 the tape, 2:44.

2 ***

3 [Off the Record]

4 [On the Record]

5 ***

6 ADMINISTRATIVE LAW JUDGE: We're back on
7 record at 2:44. You may proceed.

8 MR. DESMARAIS: For me it's been a long, hard,
9 difficult road for the last seven years. Not because of
10 the general hop industry's conditions. I'm a little bit
11 of a different case, more so because I stubbed my toe so
12 bad coming out the gate, so that -- my situation's a
13 little different than I think of some of the other
14 growers, but needless to say it does point to one of the
15 major inequities of the marketing order. Since I have
16 grown, over the years, I've been what you would classify
17 as an expanding grower, which there doesn't seem to be
18 too many of those in the hop industry, but I am one of
19 them. When the federal marketing order was proposed,
20 one the tasks that I undertook because it was pretty
21 darn critical for me to understand what the potential
22 saleable would be and how I would get base, that was
23 pretty much a real critical issue, because I do not have
24 the resources to purchase additional base. I am
25 financially intolerant of purchasing base. It's taken

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1 seven years to finally dig out the Symphony hole and
2 finally this year is the first year I feel like I've
3 climbed over that mountain. And it's taken a lot of
4 hard work and a lot of financial instability for me.
5 Not due to the hop market, but due to that stubbing of
6 my toe. So for me it was critical to come up with some
7 projections of how this order would affect me personally
8 and so I, along with Doug McKennon of Hop Growers of
9 America, me and him worked on a document and this was
10 presented back in December of 2002 to the industry.
11 Using the information that was given in the order we
12 attempted to, as accurately as we could, come up with
13 the projected total allotment and what I did -- it's a
14 little than Sparks, but what I did is I made the
15 assumption that under the order, each grower can take
16 their highest base allotment year. Now, reason would
17 follow that each state -- when I went and looked at each
18 state's total alpha production over that '97 to 2002
19 base period and went variety by variety and on the chart
20 the green represents Hop Growers of America actual
21 numbers, yellow represents my numbers that I estimated
22 for alpha levels, and pink represents the proponents
23 proposal. And what I did, I went through and I -- I got
24 HGA's numbers on exact poundages of each variety and I
25 estimated the alpha and got the total alpha pounds. And

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1 I also on a roll of pound, anything under 10 alpha,
2 obviously that just gets lumped as a 10 alpha, so we put
3 that together and did -- and that was a fairly easy
4 calculation. What I came up with was Washington's base
5 year would be, in general, 2001, Oregon's base year
6 would be 1997, Idaho's base year would be 2001. In
7 addition, this will still probably understate the total
8 alpha production because individual growers within those
9 states are going to be able to pick their individual
10 highest year, so there's going to be even more
11 efficiency brought to it. So we plugged in a three -- a
12 seven percent addition to account for that situation.
13 In addition, I have to believe there is going to be base
14 granted to some people in the hardship clause -- I mean,
15 I have hard time in -- 2001, the same year, we had a
16 large hail storm that -- with quite a few pounds that
17 were destroyed, so I would imagine that there would be
18 some Washington growers who would apply for the
19 hardship. And I'm sure there's situations in other
20 states. I mean, we can't -- we haven't even -- we
21 haven't discussed the hardship, but to assume there
22 wouldn't be any base created from that, I think would be
23 false. So I estimated that at three percent, which
24 isn't much. So what I come up with as a projected total
25 allotment is about 9.874 million pounds of alpha for the

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1 industry, somewhere in that range. If you look on to
2 page two, initially, we built a chart that would assume
3 move in some inventory into the system. Since the
4 German crop is -- actually what I've done is completely
5 removed any inventory implications because I'm going to
6 assume, for my purposes, that we are somewhat of a
7 balanced state now and that the inventory from the
8 United States will be move into the system this year.
9 So from my calculations, I've completely removed any
10 inventory requirements. Okay, so what I did is I --
11 then I had to figure out some way to deal with demand
12 because you can't really figure out what the long-term
13 saleable is if you don't have some kind of idea of what
14 your demand is. Third page is a worksheet that Mike
15 Smith presented at the Washington Hop Commission on
16 December 7, 2001, and in it -- in that presentation Mr.
17 Smith indicated that he believed the annual US demand to
18 be around 2.9 kilograms of alpha acid. So if you
19 multiply that out, you come up -- according to his
20 number an assumed United States demand of about
21 6,173,000 pounds of demand for United States alpha acid.
22 Another way to look at it would be what was produced in
23 the United States in 2002 for alpha acid and that number
24 is 6.9 million pounds. So what I did is I said okay,
25 let's look at it two ways. Let's tie the saleable to

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1 Mike Smith's -- Mr. Smith's numbers and let's tie it to
2 just 2002 alpha production in the United States,
3 assuming that those numbers are somewhat similar --
4 those are close to the demand. So what I come up with
5 is a number for Mr. Smith's twelve -- December of '01
6 projection. That would equate to a 62.5 percent
7 saleable and that -- and I don't know what Mr. Smith's
8 most recent assumptions are in the United State's
9 demand, so that number could be different, but that's
10 the last number -- that's the only independent number
11 that I've ever seen that's been put out like that in the
12 United States, so what I did, to be on the safe side
13 was, I just tied it to 2002 alpha production and so what
14 I come up with is a 70.1 percent of saleable. If we
15 move on to Exhibit 63, these are my -- pounds of alpha
16 produced for the last five years on my farm from '97 to
17 2002. Obviously, I would pick my highest year if I was
18 subject to a federal marketing order and the --
19 obviously, my highest year is 2002, 83,925 pounds of
20 alpha. If I apply the 70.1 percent saleable from the
21 worksheet, that gives me 58,831 pounds of alpha to
22 market to the system. My projected 2004 alpha
23 production is going to be 138,600 pounds; which will
24 require me to purchase 79,769 pounds of alpha. So if
25 you assume a 10 percent alpha across all my varieties,

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1 that gives me, you know, roughly 790,000 pounds of hops,
2 you know, based by. So needless to say, in my
3 estimation, this proposal has the possibility to impact
4 my operation pretty significantly. And we can quibble
5 with the numbers. I'm sure Mr. Monahan and I'm sure Mr.
6 Smith have some numbers here to show that. It could be
7 90 percent, 85 percent. 95 percent. It doesn't -- the
8 magnitude of it -- what I -- from my projections, I have
9 to come up with something that I believed to be true and
10 you know, maybe I'll learn something here in the next
11 hour or so. We'll find out, but it's pretty financially
12 intolerant for me to have to buy very much base. That
13 would be a fair statement and I'm sure we're -- you know
14 -- I -- the proponents have the luxury to go in last, so
15 I'm sure we have some other figures on that, but for
16 right now that's what I came up with. So that's one
17 obvious reason for me being against this proposal.
18 Second reason...

19 ADMINISTRATIVE LAW JUDGE: Just so the
20 transcript is clear, you estimate that it would it cost
21 you nearly \$400,000 to buy the base you would need?

22 MR. DESMARAIS: Correct.

23 ADMINISTRATIVE LAW JUDGE: All right, thank
24 you. You may proceed.

25 MR. DESMARAIS: And I -- you know -- and I --
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1 I'm not going -- I mean, obviously any base that would
2 be -- you know, you could lease base, which would be
3 significantly lower than that. You could also amortize
4 that .50. I don't think anyone -- when you purchase
5 base, obviously that would be amortized over a longer
6 run, so you know, that wouldn't be necessarily a one
7 year cost and I think as Mr. Monahan alluded to in some
8 of his questions of Mr. Riel, you know, the
9 recalculation or the -- I guess you have to redo the
10 vote every four years -- continuation referendum. And I
11 would agree that would have some -- probably a
12 destabilized effect on the price of base but that still
13 injects a whole lot of uncertainty into my operation and
14 for me, I can't tolerate uncertainty. I have to have
15 certainty. That's the key for me moving forward and so
16 anyway, other than the financial aspects of the proposal
17 that caused me to be against the hop marketing order,
18 over the last year I've also realized that -- I think
19 has been testified by a number of different opponents --
20 it's become clear to me that a group of my peers making
21 decisions for me would be very difficult, if not
22 impossible, to achieve accurately and properly. I would
23 not want to have that responsibility. And I was
24 involved -- and I'm sure these questions will come out
25 here in a few minutes -- I was involved -- I was on the

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1 hop production management -- oh, whatever -- team for a
2 while, I guess you'd call it. I went to a few meetings.
3 I did provide some input. I provided some input on the
4 set-aside program. And shortly after some of that -- I
5 gave that input, I became increasingly uncomfortable
6 with that program and I decided that it was completely
7 inappropriate for me to be sitting in a room with seven
8 or eight or nine other growers and to -- deciding things
9 that could be done legally that can cause financial harm
10 to people I don't even know. And at that time I didn't
11 know Kevin Riel that well, I didn't know Stacey
12 Puterbaugh that well, but I got to know them over the
13 last year pretty well, and for me to sit in a room and
14 devise a plan that could potentially cause them
15 financial harm or another grower in this room is
16 something that I'm not comfortable doing. There's [sic]
17 other reasons I became against the set-aside, but --
18 have not a lot of bearing, but it's fair to say that I -
19 - it's fair to say that my belief system has firmed in
20 the last year and I do not believe that a marketing
21 order or central decision-making process by hop guards
22 is appropriate, nor moral. That's it.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Desmarais. Mr. Moody, do you have questions for Mr.
25 Desmarais?

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GEORGE ERIC DESMARAIS,

having first been duly sworn, according to the law,
testified as follows:

BY MR. MOODY:

Q. Just a few, Your Honor. Eric, you would
characterize yourself as one of a group of -- what we've
kind of collectively called expanding producers?

A. Yes.

Q. And is your -- was your decisions to
expand based on the desire to take advantage of those
setting aside acreage or on the basis of other factors
and if so, what were those factors?

A. It was not to take advantage of my fellow
growers, it was because there was -- what I saw as
opportunities, that's one reason. And also to help
continue the financial healing of my farm.

Q. And your expansion plans were put in
place long before the set-asides came along?

A. Yes.

Q. Do you ever sell hops at below the cost
of production?

A. Well, that's an interesting question that
keeps popping up and that's a pretty loaded question.
You know, I look at it as -- I guess an analogy that I'd

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1 like to bring to some people is that of a mutual fund.
2 I have what's considered -- in my mind I consider a
3 portfolio of agricultural commodities. I grow nine
4 different hop varieties and about seven different apple
5 varieties and five different cherry varieties. That's a
6 lot of different varieties over three different
7 commodities. And yes, in some given years, you know,
8 there has been -- I've sold -- I've had apples that have
9 sold for \$35 a bin and that's been below the cost of
10 production. I've had hops that at the end of the
11 marketing season, some excess hops that I've sold for
12 .50 or .60 a pound. But when you look at the totality
13 of the farm budget, it's a positive and just like a
14 mutual fund, you don't dump four loser stocks when maybe
15 the overall mutual fund portfolio went up. So that --
16 in my mind, that's the kind of analogy I draw and if we
17 want to look at the most, you know, volatile segment of
18 the hop industry, which is the CTZ segment, that one --
19 it is -- it does have some instability in it and some --
20 and a lot of different price rises in it -- price rises
21 and price declines because it is the most global of the
22 -- of the hop varieties and it can be interchanged
23 freely amongst many different varieties, so that
24 variety, in 2000, I believe -- after the fires in the
25 United States, I sold spots, I sold excess hops for

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1 \$3.20 a pound. In some of the later years here I've
2 sold them for as low as .50 and I've sold them for every
3 price in-between them. So you know, that -- the selling
4 hops below the cost of production, that needs to be
5 taken into context with the larger -- with your larger
6 farm and what's going on.

7 Q. You grow both aroma and alpha varieties?

8 A. I do.

9 Q. And are your hops for '03 contracted?

10 A. They were.

11 Q. And do you have forward contracts going
12 out into the future?

13 A. I do.

14 Q. Speaking of cost, that figure you gave of
15 -- it was \$400,000.

16 A. Um-hum.

17 Q. That was based on a cost of base at \$5...

18 A. Yeah, 50 -- I mean, you have to get --
19 you know, it used to be priced in pounds of hops, so --
20 I mean, there's a little bit of a -- you know, to get it
21 into pounds of alpha...

22 Q. Okay. So you're looking at a hops base
23 -- it was .50 per pound of hops?

24 A. Yeah.

25 Q. So looking at the operation of the old

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1 order, would it be correct to say that might be on the
2 low side, because didn't we have some testimony that the
3 price of base got up to 2 and \$3?

4 A. Yeah. I mean, I tried to pick something
5 out a conservative number.

6 Q. So this \$400,000 could be considerably
7 larger?

8 A. It could. Especially if the German crop
9 disaster causes a price fight, that -- and this -- a
10 marketing order went in, you could be looking at a much
11 higher cost for base.

12 Q. And your general agreement was --
13 previous testimony that the world market for alpha is
14 globally competitive, correct?

15 A. Yes.

16 Q. And that any effort on the US to have a
17 marketing order really is not going to have any effect
18 on that competition?

19 A. Repeat the question.

20 Q. Well, what would -- given the global --
21 globalality [ph] of the market, what would you predict
22 would happen if -- the rest of the world in response to
23 the US supply control marketing order?

24 A. I would fully expect the German growers
25 to plant more. Their hop yards -- I've only been to

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1 Germany once and -- but I've met with lots of German
2 growers before and it's amazing how you can communicate
3 with fellow hop growers and not know the language. And
4 a hop grower here is the same as a hop grower there and
5 if -- over time, they will rise [sic] their production
6 to any response to us cutting. And also, the issue with
7 China -- I mean, sure, there's not a whole lot of -- I
8 don't exactly what they're exporting. You hear things
9 that there have been some exported. I don't know
10 exactly for sure if those are true, but what I do know
11 is there is no doubt. Once you open a door and you open
12 a door to them and let them get the facilities in place
13 to go, it's going to be much tougher dealing with them.
14 So there's an issue of opening the door and I think a
15 hop marketing order would definitely have the potential
16 to open that door wider than it already is today.

17 ***

18 MR. MOODY: That's all for right now. Thank
19 you.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
21 Moody. Other questions for those who are in a position
22 against the marketing order? Mr. Carswell?

23 ***

24 BY MR. CARSWELL:

25 Q. Mr. Desmarais, just real quick. You show
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1 here a big jump in 2004 to 139,600 pounds from 83,000.

2 A. Uh-huh.

3 Q. Is -- what percentage of that is
4 contracted for 2004?

5 A. About 75 percent.

6 ***

7 MR. CARSWELL: Thank you very much.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Carswell. Other questions from those who are against?
10 I'd now invite questions from those who are here in a
11 position in favor of the hop marketing order. Mr.
12 Monahan?

13 ***

14 BY MR. MONAHAN:

15 Q. I'll start. Can you -- sir, tell me how
16 Hop Union works.

17 A. Let's say like Yakima Chief, consignment.

18 Q. There are partners in the organization,
19 is that right?

20 A. There are.

21 Q. You have -- you purchased an ownership,
22 is that right?

23 A. I did.

24 Q. And what the ownership entitles you to do
25 is to deliver a certain number of pounds of hops, is

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1 that right?

2 A. It does.

3 Q. So you invested money for the right to
4 deliver to market a certain number of pounds -- is it in
5 alpha or just gross pounds?

6 A. Gross pounds.

7 Q. What was the value of your investment?

8 A. I'm not going to answer that question.

9 Q. How many pounds did you purchase the
10 right to deliver?

11 A. I'm not going to answer that question.

12 Q. In your opinion, was that a worthwhile
13 investment for you to pay money for the right to deliver
14 pounds to market?

15 A. It was.

16 Q. That was where the actual investment
17 carried value with it and you think it was a wise
18 business decision?

19 A. It was.

20 Q. Do you think that's a good model for the
21 industry to follow?

22 A. I have no idea if it's a good model for
23 the industry to follow. It works for Hop Union.

24 Q. Works for you.

25 A. Works for me. Works for Hop Union.

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1 Q. Okay. What came first -- you're going to
2 have to help me out here -- the production management
3 team or the Hop Producers Alliance board?

4 A. Probably the alliance board, I guess.

5 Q. Okay. And describe -- we've heard some
6 description of it, but describe what the Hop Producers
7 Alliance board was intended to accomplish. What was its
8 mission, its purpose?

9 A. I'm not really exactly sure. They -- I
10 think they pooled hops. At that time my father was
11 still raising hops and I know I participated in some of
12 those meetings. He had put hops in one of the pools and
13 I think they pooled them and had different pricing
14 structures and were -- something along those lines.

15 Q. You were actually a board member of the
16 hop producer alliance board...

17 A. Yeah, I believe I was.

18 Q. Okay. And so you actually went to
19 meetings and had access to -- were minutes taken?

20 A. Could be.

21 Q. Okay. The purpose of the Hop Producers
22 Alliance board was to come up with a plan to voluntarily
23 reduce alpha production, was it not?

24 A. I don't know. I can't -- I mean, yeah.
25 I know that was a part of it, but I think the other --

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1 the reason I was there was I was representing my
2 father's farm and he had -- like I said, he -- they also
3 had a pooling arrangement where they took hops and put
4 them in pools and priced them in different structures,
5 and he had hops in one of the pools. That's what -- you
6 have to understand, my father farmed in 2000 and I took
7 his farm over in 2001, so there was -- that's -- there
8 was -- that was happening right at that interchange.

9 Q. So you took over in 2001?

10 A. My father's acreage, correct.

11 Q. Okay. How many acres were those?

12 A. I'm not going to say.

13 Q. When we're looking at -- we'll get there
14 in a minute, but when we're looking at Exhibit 63 -- so
15 then when we see the general increase from 1997 through
16 2000, that is just one farm's production, right?

17 A. Yeah, that's my farm. That's correct.

18 Q. And then in 2000-2001, that would be two
19 farms' production?

20 A. No.

21 Q. When did you acquire your father's
22 operation?

23 A. 2001.

24 Q. So 2001 would be both your operation and
25 your father's operation combined?

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1 A. Just my operation. Because I -- because
2 I took -- no, my father's operation is not reflected --
3 okay, in 2000 he was a separate entity farming on his
4 own, so those numbers aren't reflected in here. In 2001
5 I took over his farm.

6 Q. Okay.

7 A. So 2001 is -- would be his -- in 2001 his
8 acreage would be included.

9 Q. And you're not inclined to tell us what
10 that acreage is?

11 A. No, I'm not.

12 Q. If we got from 2002 to your projections
13 in 2004...

14 A. Um-hum.

15 Q. Are we adding more acreage again?

16 A. We are.

17 Q. How much?

18 A. I'm not going to tell you.

19 Q. Where did you get the acreage?

20 A. Out of a hat. From other farms.

21 Q. Going back to the Hop Producers Alliance
22 board.

23 A. Um-hum.

24 Q. You described these pools -- this is the
25 organization that had a board decide and had a board

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1 resolve to engage in a voluntary reduction of alpha acid
2 for the entire industry. Isn't that right?

3 A. I don't know if its full intent -- I
4 don't know if its sole intent was that, or pool hops --
5 I mean, there was a big pooling structure going on and
6 so I think -- as I recall, it was one, was to reduce
7 acreage and two, was to pool the hops into different
8 pricing categories and then allow the spot hops in the
9 industry to kind of meter into the system at a different
10 level. So that was the -- that's what I understood its
11 two functions as.

12 Q. Right. And so one of those functions was
13 to reduce acreage and alpha acid production, was it?

14 A. I wouldn't -- I recall that, yes.

15 Q. In fact, as a board member, you were
16 supportive -- publicly supportive -- of the industry
17 move to reduce alpha acids.

18 A. I can't personally remember that, but I
19 certainly could've been.

20 Q. Okay. And you participate in these board
21 meetings -- if you may have supported a reduction in
22 alpha acid, were you part of the group that committed to
23 a three percent reduction in order to match the larger
24 producers' seven percent reduction in alpha?

25 A. I do not believe I was.

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1 Q. Is it possible you don't remember making
2 those statements?

3 A. I do not think I personally committed to
4 that. I do not recall that.

5 Q. Okay. In any event, while the Hop
6 Produces Alliance developed a plan -- while you were a
7 board member...

8 A. Um-hum.

9 Q. ...to reduce acreage, you actually
10 increased acreage?

11 A. I did.

12 Q. Did you change your varieties to increase
13 alpha acid production?

14 A. From two -- which years?

15 Q. Tell me when the Hop Producers Alliance
16 board was making these efforts?

17 A. I believe it was in the fall of 2000
18 through 2001.

19 Q. Okay, and during that time frame, did you
20 change varieties to increase alpha production?

21 A. Change varieties -- no. I did not.

22 Q. Okay. Did you do anything to increase
23 alpha production?

24 A. I did, I did. I purchased some land from
25 one of the proponent -- board members, actually.

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1 Q. It was idle land, wasn't it?

2 A. It was.

3 Q. And it had not been in production?

4 A. Well, I purchased two parcels, actually.
5 One was -- had been in production and one wasn't.

6 Q. Okay. And so you -- during the time that
7 you were a Hop Producer Alliance board member and during
8 which the industry was making voluntary efforts to
9 reduce alpha production, you took idle land and raised
10 alpha hops on it?

11 A. I did.

12 Q. Tell me about the HGA production
13 management team task force.

14 A. I believe that was kind of a precursor to
15 the proponents committee and I -- regrettably now,
16 attended a few meetings about 22 months ago.

17 Q. Okay. In fact, you were one of the
18 charter members, were you not?

19 A. I have no idea what the chart member
20 group list -- how that would be comprised of.

21 Q. Do you recall being identified by the Hop
22 Growers of America as a member of the production
23 management team?

24 A. Oh yes, I certainly do.

25 Q. In fact, mailings went out with your name
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1 on them as a member.

2 A. They did.

3 Q. Okay, and the mailings indicated that the
4 purpose of the task force, of which you were a member,
5 was to reduce the oversupply of alpha acids?

6 A. Yes.

7 Q. Okay. And that's something that you had
8 signed on for in support of the reduction of alpha
9 acids?

10 A. I didn't sign on in support of anything.

11 Q. Okay. You just had your name on the
12 letters and were a member of the team?

13 A. I made my position abundantly clear to
14 several board members. I made my position abundantly
15 clear to Doug McKinnon of the Hop Growers of America,
16 and this is as of early February. I also made my
17 position abundantly clear to Mr. Leslie Roy, I made my
18 position abundantly clear to Ken Desserrault -- in fact,
19 I had a meeting with Ken Desserrault in his office in
20 early February where he attempted to convince me of the
21 need for a hop marketing order and the set-aside program
22 in the United States and I told him at that time that I
23 did not support that. And so I think my track record of
24 changing my mind and being clear about that to several
25 people is pretty clear.

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1 Q. When was the HGA task force production
2 management team put together?

3 A. I would say -- if I remember right, I
4 think it was late fall of 2001, something like that.
5 November -- I can't recall specifically.

6 Q. Well, you may have changed your mind, the
7 mission and purpose of the -- and stated goal of the
8 production management team always stayed the same,
9 wasn't it? That was to reduce...

10 A. Yes.

11 Q. ...oversupply of alpha acid?

12 A. Yes, I believe so.

13 Q. How long did you remain a member? Did
14 you ever resign?

15 A. I didn't know it was a formal committee.
16 I didn't understand -- I didn't know -- there was no
17 structure, that I was aware of -- formal structure.

18 Q. How did you become a member?

19 A. Well, I think the industry encouraged
20 people to show up and be a part of the meetings as they
21 saw fit.

22 Q. Okay. And you learned through these
23 meetings, did you not, that there was a concerted effort
24 by a number of growers in the community to reduce their
25 alpha acids?

1 A. I did.

2 Q. Okay. And with that information in hand,
3 you went out and increased your alpha acid production,
4 did you not?

5 A. In what year?

6 Q. When you were a member of the production
7 management team.

8 A. Let me think of that year. If I
9 increased my overall alpha production from 2001 to 2002?

10 Q. I don't know when the dates were, sir. I
11 just want to know when you were a member of the
12 production management team...

13 A. Well, I was a member, obviously, in late
14 fall of 2001, okay, so the next year would be 2002, so I
15 mean, there was a slight increase in my overall pounds
16 of alpha produced, so that would -- you could
17 characterize it as there was a slight increase in 2002.

18 Q. Would you agree that while you were a
19 member of the Hop Producer Alliance board and the
20 production management team, that you agreed, did you
21 not, that there was an oversupply of alpha acid on the
22 market?

23 A. Yes.

24 Q. Okay. And you agreed that that was
25 something that the industry really needed to address?

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1 A. At that time I felt -- at the time, I was
2 involved more and like I said, as I -- as time has gone
3 on, I've realized that I have no business sitting in a
4 room trying to decide what's best or not best for my
5 fellow growers, because when you do, it's like a
6 balloon. You push on one side, out pops the other side.
7 So what's good for this group and what this group thinks
8 hurts another group. So it doesn't -- you know, it
9 doesn't -- it's one issue or another. I mean, you've
10 got to pick sides and that's the difficultness of trying
11 to define this equitable and one big difference between
12 Hop Union and our model, and what you guys are
13 proposing, is that Hop Union, we all went into it equal.
14 There was no -- it didn't matter if I was a small
15 grower, big grower, we all had X amount that we put in
16 the business and we got our own share. So there was an
17 equitable line drawn at the very first going in. This
18 is not an equitable line and so when one grower thinks
19 they have a plan, it invariably hurts another grower and
20 so what I realized is that I'm not in a position to
21 decide what is best for one, because it's going to hurt
22 another and I can assure you, Mr. Monahan, and I assure
23 the rest of the board members that I will never attend a
24 -- any kind of centrally planned committee meetings in
25 the near future, the medium future, probably the long-

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1 term future. They will not have to worry about that.

2 Q. I probably know the answer to this, but
3 I'll ask it anyway. Did you participate to any degree
4 in the set-aside program?

5 A. I did not.

6 Q. At the start of the 2002 season --
7 obviously, when we look at Exhibit 63, your actual alpha
8 was obviously less than the 83 9-2-5, right?

9 A. You mean my production?

10 Q. Yes, sir.

11 A. Well, it would've been because of the 10
12 percent aroma factor, correct.

13 Q. That's the adjusted alpha.

14 A. Right, that's the adjusted alpha.

15 Q. Your actual alpha would've been less,
16 right?

17 A. Sure.

18 Q. What was your actual alpha in 2002?

19 A. I don't have that number, but it would be
20 -- I'm roughly 50-50. I -- you know, so it would've
21 been a little bit smaller than that.

22 Q. What's the other 50?

23 A. Aroma hops.

24 Q. What kind of aroma hops?

25 A. I'm not going to tell you.

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1
2 MR. MONAHAN: Your Honor, at this point in
3 time we are dealing with a witness who is making a
4 specific dollar calculation and giving pounds of
5 adjusted alpha produced. I think I'm compelled to check
6 this math and that that's information that we need.

7 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, to the
8 extent the witness wishes to shield that information,
9 I'll honor that, but if it does come into play when you
10 give the weight to the exhibit. In other words, he need
11 not answer.

12 MR. MONAHAN: I understand.

13 ADMINISTRATIVE LAW JUDGE: But it weakens his
14 presentation.

15
16 BY MR. MONAHAN:

17 Q. Do you grow Willamettes?

18 A. I do.

19 Q. And those are 3.5 percent alpha, about?

20 A. Mine are usually a little higher, four,
21 but it's roughly.

22 Q. Okay. Do you have an estimate, sir, of
23 what your actual alpha was in 2002?

24 A. I do not.

25 Q. Could it be less than 58,831 pounds?

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1 A. Not a chance.

2 Q. Okay. Do you know what the average alpha
3 is for the 50 percent of your hops?

4 A. I don't have that number off the top of
5 my head. I don't...

6 Q. Okay. Do you have a ballpark for me?

7 A. Without looking at the -- you know.
8 Without looking at the exact numbers, I can't give you
9 that because I don't have that -- those numbers up here.

10 ***

11 MR. MONAHAN: Would Mr. Moody wish to...

12 MR. MOODY: Your Honor, I don't mean to, you
13 know, interrupt Brendan, but I want to respond to his
14 point -- you know, he's -- fair to ask his questions and
15 everything, but I want to challenge the connection
16 between his complaint that Mr. Desmarais doesn't give
17 some proprietary information and any affect on weight of
18 the exhibit, because the exhibit deals with his farm --
19 we could just as easily put this in as a hypothetical
20 farm. In other words, it doesn't really matter which of
21 the varieties it is or how many acres it is under the
22 proposed order. This just an example of how the math
23 would work under the proposed order to figure out that,
24 you know, a person who needed to get base of that many
25 pounds, I have to pay that many dollars. And so I, with

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1 all due respect, must challenge Brendan's comment that
2 it weakens his exhibit. I don't think it does at all.

3 ADMINISTRATIVE LAW JUDGE: Okay. It was my
4 comment, but I take no offense and if it is meant as a
5 hypothetical, fine. I don't believe it was offered as a
6 hypothetical, however, but yes, it still is illustrative
7 and it shows how a person might be required to pay a
8 certain amount for base if all the presumptions are
9 true. Go ahead, Mr. Monahan.

10 MR. MONAHAN: Sure. I just -- to make a
11 record for those who might actually consider this
12 exhibit, I -- Mr. Moody, I -- with all due respect, I
13 don't think you could be more wrong about the weight in
14 that the actual alpha produced in 2002 has obviously
15 been adjusted upwards because of the included 10 percent
16 aroma factor. The actual alpha is going to give us a
17 real idea of how the saleable quantity actually affects
18 this person's -- whether hypothetical or real growers
19 need for base and to the extent that this 70.1 percent
20 figure is applied to the adjusted alpha, it may well be
21 tantamount to or equal to the actual alpha production.
22 That's why I think it's an absolutely important issue.
23 But I will move on.

24 ADMINISTRATIVE LAW JUDGE: Mr. Moody, you may
25 respond, if you'd like.

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1 MR. MOODY: It's just that -- you know,
2 whether al aromas produce less than 10 percent, whether
3 it's the three percent kind, the four percent, the five
4 percent, the nine percent, or the 9.9 percent is
5 completely irrelevant. They all get 10 percent.

6 MR. MONAHAN: I'm afraid I need to respond.

7 ADMINISTRATIVE LAW JUDGE: Yes. They get 10
8 percent at one point, but not at market, and so you may
9 respond.

10 MR. MONAHAN: Yeah. That's the whole point.
11 If you have a number of aromas and nine percent...

12 MR. MOODY: Well, let me see if I can clarify
13 it for you.

14 MR. MONAHAN: I'd like to finish, please.

15 ADMINISTRATIVE LAW JUDGE: Go ahead, Mr.
16 Monahan.

17 MR. MONAHAN: At nine percent alpha and
18 they're a given -- they're adjusted up to 10 percent
19 alpha, you haven't really improved that much and if
20 there's a 70 percent saleable, then you're going to be
21 below your actual alpha production. If the alpha is
22 three percent, three and a half percent, and there's a
23 70 percent saleable, you're going to have more base than
24 you know what to do with. You're going to have a
25 hundred percent more base than you need, so it's

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1 absolutely essential what these actual alpha numbers
2 are. That's why I asked about the Willamettes.

3 ADMINISTRATIVE LAW JUDGE: Mr. Moody, do you
4 wish to respond?

5 MR. MOODY: Actually, Eric was about to and
6 he's the expert.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank
8 you. You may proceed.

9 MR. DESMARAIS: Okay. You're correct in that
10 -- in what you're saying, but the way that -- the number
11 here that mitigates that is my projected 2004 alpha
12 production is my actual alpha production by variety of
13 what I anticipate I will get. It's not the higher --
14 it's not the 10 percent added in, so when you go -- when
15 you're going to figure the amount of alpha pounds you
16 have available for sale, you apply whatever saleable
17 percentage to your highest year. That gives you the
18 pounds you have available for sale. Now, in 2004 I
19 scaled the Willamettes back down from 10 back down to
20 four and a half -- four -- three and a half to four by
21 variety. And I also have some Tettnangers. Those are
22 about five, four and a half, five. Scaled those back,
23 too. I also have some Cascades set at a different
24 price, so that's where that comes back into play. That
25 would reduce -- that -- those -- that reduces my

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1 projected -- when I bring the lower alpha varieties back
2 in for 2004, that brings -- that reflected in that
3 number.

4 ADMINISTRATIVE LAW JUDGE: You stated a
5 variety that I didn't catch the name of. Started with a
6 T?

7 MR. DESMARAIS: Tettanager,
8 T-e-t-t-n-a-n-g-e-r.

9 ADMINISTRATIVE LAW JUDGE: Thank you.

10 MR. DESMARAIS: It's the projection where
11 that's where those numbers are brought back in. Every
12 farm needs to look at what they will produce in 2004,
13 multiply their expected production times their expected
14 alpha, the low alpha, their actual alpha. That will
15 give them, for projected 2004 alpha production. You
16 then take your highest year, '97 to 2002, apply the
17 saleable percentage that you think you're going to get
18 and that -- and then see where you're at. That's how
19 the math is done.

20 ***

21 BY MR. MONAHAN:

22 Q. I understand. My question was just to
23 really relate what your actual -- what your calculated
24 alpha pounds available to sale -- for sale, actually
25 compared to the production you were achieving when this

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1 hop marketing order was first introduced or brought up
2 as a concept when you were a member of the production
3 management team.

4 A. Well, I think, obviously -- it's pretty
5 obvious that my production has increased. Increased
6 through the time I was an alliance board member.
7 Increased through the time I was on the HGA production
8 management team. And has increased -- and it's
9 increased even when I've been an opponent. So I think
10 it's fairly obvious that I've increased my production no
11 matter what side of the fence I've been on.

12 ***

13 MR. BARTON: We need to change.

14 ADMINISTRATIVE LAW JUDGE: All right, we'll
15 change tapes at 3:29.

16 ***

17 [Off the Record]

18 [On the Record]

19 ***

20 ADMINISTRATIVE LAW JUDGE: We're back on
21 record at 3:30. Mr. Monahan?

22 ***

23 BY MR. MONAHAN:

24 Q. Thank you, Your Honor. Of the 83,925
25 adjusted alpha -- strike that. Of your actual alpha for
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1 2002, what percentage of it was contracted before
2 planting in the spring -- or before stringing in the
3 spring?

4 A. Well over 100 percent.

5 Q. You'd contracted over 100 percent?

6 A. I contracted up to my maximum amount that
7 I believed I could sell and I didn't -- one yard was a
8 little lower yielding, so actually when you look
9 backwards looking -- focus on it, I actually end up
10 being over-contracted for the year. I was actually --
11 actually, I ended shorting some alpha contracts.

12 Q. Oh. So, okay, you couldn't fill your
13 contracts in '02?

14 A. Yeah. Yeah, because I sold -- I didn't
15 want to have any spots for the 2002 fall, so I sold the
16 maximum amount of production I thought I could possibly
17 achieve.

18 Q. What was the price on those contracts?

19 A. I'm not going to answer that.

20 Q. Was the below the cost of production?

21 A. No, it wasn't.

22 Q. What was your cost of production in 2002?

23 A. I'm not going to answer that.

24 Q. What's the difference in acres in the
25 ground between 2002 and 2004?

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1 A. About 150.

2 Q. You've acquired 150 acres since 2002?

3 A. Excuse me. Since 2002. Yeah. About 150
4 -- sorry, more than that. A little over 200.

5 Q. And how many of those 200 acres were
6 producing hop yards when you purchased them?

7 A. About 200.

8 Q. All of them?

9 A. No, that's not correct. About 60 of it
10 isn't, so I guess it'd be 140. I'm kind of pulling
11 these numbers off the top of my head, so...

12 Q. Okay.

13 A. ...excuse me for -- you know, I'm not
14 trying to be evasive, I'm just...

15 Q. Sure.

16 A. ...trying to get the numbers right.

17 Q. So you've purchased 140 acres since 2002?

18 A. Just a second. Let me write this stuff
19 down so I can try and answer your question. It's
20 approximately 200, but 140 that was planted.

21 Q. Planted when you purchased it?

22 A. Correct.

23 Q. Did it have base?

24 A. No.

25 Q. Would there be base associated with that

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1 140 acres?

2 A. I have no idea.

3 Q. Can you tell us who you bought it from?

4 A. No, I cannot.

5 Q. Is it on a contract or is title passed?

6 A. That information's proprietary.

7 Q. Might that affect your base?

8 A. No, because the expansion came in 2003.

9 Between the 2003 and 2004 growing season, so it wouldn't
10 haven't affect on my base at all. In fact, if anything,
11 probably many in this room would argue that I was pretty
12 stupid to do it in the face of a marketing order,
13 because I could potentially buy land I have no base for.

14 Q. Did you think 2003 was going to be the
15 basis for base allotments?

16 A. I thought that would be highly unlikely.

17 Q. You thought it'd be highly unlikely that
18 2003 would be the base year?

19 A. I thought it would be highly unlikely
20 that the proponent committee would propose that. Now, I
21 don't know about the USDA folks. I think testimony has
22 came out that 2003 sure sounds like a reasonable base
23 year, because there hasn't been any set aside alliance
24 or any of that other kind of stuff. So my -- what I'm
25 saying is highly doubted that. What I meant by that is

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1 I highly doubted the proponent committee would include
2 2003 as a base year.

3 Q. Is the purpose of acquire the 200 acres
4 an effort to improve your base?

5 A. No, because it came after. It came after
6 the base -- the 2002 growing season. How could it have
7 been?

8 Q. Well, we didn't know then when the base
9 year would be, did we?

10 A. Well, then it was '97 to 2001. And on
11 the department forced you guys to add another year, you
12 didn't do it yourself.

13 Q. So you were aware of copies and prior
14 drafts of the marketing order when you were making these
15 decision to increase...

16 A. Well, I think any -- with the magnitude
17 of impact this could have for me, I think that would be
18 fair to say that I was aware of the document.

19 Q. Let's look at Exhibit 62. Is that the
20 right one with the charts and graphs?

21 ***

22 ADMINISTRATIVE LAW JUDGE: Yes, sir.

23 ***

24 BY MR. MONAHAN:

25 Q. Okay.

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1 A. If anything, my purchasing hops in the
2 latter -- in 2003 into the 2004 growing season would --
3 maybe would -- especially in a situation would probably
4 want me to vote for a marketing order to try and protect
5 my position.

6 Q. I note that the bottom of the first page
7 of Exhibit 62, that in coming up with your projected
8 total allotment you've gone ahead and added about
9 900,000 pounds of alpha to the actual alpha, is that
10 right?

11 A. That would be correct.

12 Q. Dr. Jekanowski did a little factor
13 upwards. He chose five percent, do you remember that?

14 A. I do.

15 Q. Why did you chose to add twice as much as
16 Dr. Jekanowski?

17 A. Well, Dr. Jekanowski didn't -- I don't
18 think he understood. I think he was too conservative.
19 I don't think he understood the hardship clause and I
20 don't think he understood the situation that occurred in
21 Washington in the year 2001 with the hailstorm.

22 Q. Okay. So there's three percent of it.
23 What -- he had a five percent efficiency factor, is that
24 what you'd call it?

25 A. Yes.

1 Q. And you chose seven percent?

2 A. I did.

3 Q. Why is that?

4 A. That was a number that me and Doug
5 McKinnon [ph] at BC [ph] came up with. And that -- you
6 know, that was -- that's -- we had to apply some
7 percentage, because there's going to be -- each grower
8 gets to pick their individual highest year. So there's
9 -- as like in Washington, as we've heard testimony,
10 we've seen some growers that have gone way down and
11 we've seen that some have gone way up. And so there's
12 going to be even a greater -- every -- there's going to
13 be even a greater amount alpha pounds wrung out of the
14 wet towel, so to speak.

15 Q. Any other...

16 A. So...

17 Q. Any other mistakes in Dr. Jekanowski's
18 presentation you can point out for me?

19 A. This is just meant to be -- this is...

20 ***

21 MR. MOODY: Wait a minute. The fact that the
22 two...

23 MR. MONAHAN: I'll...

24 MR. MOODY: ...model makers...

25 MR. MONAHAN: I'll withdraw the question.

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1 MR. MOODY: Thanks, Brendan.

2 ***

3 BY MR. MONAHAN:

4 Q. I have in -- your Exhibit 62 does not
5 show actual alpha production for Oregon. Have you taken
6 the time to consider one way or the other whether this
7 projected alpha allotment for Oregon would increase the
8 market share of those aroma growers?

9 A. What do you mean by having taken --
10 restate the first part of the question?

11 Q. I didn't mean it to be a critique, it was
12 a question. I'm sorry.

13 A. Yeah, okay. Okay.

14 Q. Have you taken the time or considered
15 whether the manner in which this alpha adjustment
16 applies to -- excuse me -- the aroma adjustment works
17 would result in Oregon having a greater alpha allotment
18 than they actually produce?

19 A. Currently?

20 Q. Yeah.

21 A. I don't know, I didn't do that number.

22 Q. Okay. And in adding 900,000 pounds to
23 the actual production, you've essentially added a number
24 that's, well, about 80 percent more than all of Idaho
25 produced? Do I have that right?

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1 A. Yeah. I'd also...

2 ***

3 ADMINISTRATIVE LAW JUDGE: Is it 80 percent
4 more?

5 MR. MONAHAN: Yes. Idaho produced, according
6 to these numbers -- and this is even adjusted -- upwards
7 for aroma 537,429 pounds of alpha. And Mr. Desmarais,
8 because of his 10 percent efficiency factor and hardship
9 factors would add 900,000 pounds.

10 THE WITNESS: I'd also note that, you know, I
11 was under my definition of -- when I did this I -- you
12 know, was the proponents committee definition producer
13 of the infrastructure. We've only needed an
14 infrastructure to apply for base and that could change
15 this and I would imagine that would change it in an
16 upward way.

17 ADMINISTRATIVE LAW JUDGE: I have to back up,
18 Mr. Monahan. You're talking about Idaho rather than
19 Oregon?

20 MR. MONAHAN: There I was talking about Idaho,
21 Your Honor.

22 ADMINISTRATIVE LAW JUDGE: Okay.

23 MR. MONAHAN: And again, Mr. Puterbaugh may
24 correct my math, I thought it was -- I just thought that
25 900,000 was 80 percent higher than about 537.

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1 ADMINISTRATIVE LAW JUDGE: Okay. But I
2 thought you'd talked about Oregon.

3 MR. MONAHAN: That was a prior question, Your
4 Honor.

5 ADMINISTRATIVE LAW JUDGE: All right. And did
6 you give a percentage with regard to Oregon?

7 MR. MONAHAN: No, I had asked a question as to
8 whether their market share would increased and, in fact,
9 whether their allotment of alpha was more than the alpha
10 they actual produced.

11 ADMINISTRATIVE LAW JUDGE: I remember now.
12 All right. Thanks. I didn't track you changing from
13 Oregon to Idaho and that's why I was confused.

14 MR. MONAHAN: Okay.

15 ADMINISTRATIVE LAW JUDGE: Thank you.

16 MR. MONAHAN: Thanks for helping me clarify
17 the record.

18 THE WITNESS: Each individual Oregon grower
19 can take his own numbers. That would be the most
20 accurate way. And this chart was provided to all the
21 Oregon growers, the opponents. We provided it to them a
22 year ago. And so they've had a year to look at it and
23 figure out their own situation. So I -- assuming from
24 as many of them that are against the proposal, I'm
25 assuming that they don't seem to stand to gain a lot

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1 from this, or at least what they perceive to gain.

2 MR. MONAHAN: I have nothing further, Your
3 Honor.

4 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
5 Monahan. Any other question from those who are here in
6 a position in favor of a marketing order?

7 MR. SMITH: Your Honor, I'd like to ask a
8 couple questions.

9 ADMINISTRATIVE LAW JUDGE: All right. Mr.
10 Smith, would you come forward and find a microphone?

11 ***

12 BY MR. SMITH:

13 Q. Thank you. Mr. Desmarais, is it okay if
14 I call you Eric? Thanks. Eric, I really don't to pry
15 into any of your personal business arrangements and
16 dealings. I think there's been way too much of that
17 done in these hearing so far. But I'm curious. You've
18 heard the testimony through the hearing about spot hops
19 versus contract hops and so forth, and the statement's
20 been several times by opponents -- not necessarily
21 opponents, but by growers, that hops shouldn't be grown
22 if they don't have a contract. Would you agree or
23 disagree with that statement?

24 A. I think each individual farmer needs to
25 make their own decision on whether to grow hops, whether

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1 to contract it or spots.

2 Q. In the past, though, you -- I think you
3 testified earlier that you'd been sold, primarily.

4 A. I have. And just I have, because I've
5 chosen that as my mechanism to bring stability to my
6 farm. So I -- there's other growers who are financially
7 capable of raising lots of spots and potentially -- and
8 this is a good -- this year's a great example -- is I'm
9 not -- I don't have any inventory, and so I don't have
10 any inventory, I don't have any spots. So I'm going to
11 completely under perform, I guess, relative to, say, the
12 Yakima Chief market pool or one of the other
13 independents that has, you know, spot hops. So for me,
14 I've chose to stay well contracted just because it's
15 what I need to move the ball forward.

16 Q. Do you think that would be your strategy
17 going forward as well?

18 A. You know, it makes it -- the current
19 situation in the hop industry, there's going to be --
20 it's going to be contracts for especially the generic
21 alpha type varieties. Those are going to be that model
22 if that's going to be more difficult to maintain.

23 Q. I see. So you stated, I think, earlier
24 that 75 percent of your 2004 crop is contracted?

25 A. It is.

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1 Q. Is that in 75 percent of the pounds of
2 production or the pounds of alpha?

3 A. No. I do it by acreage, because if you
4 do it by pounds, it doesn't -- the lower yielding
5 varieties, they completely underestimate your
6 -- versus the higher yielding varieties completely
7 underestimates the -- you got to do it by acreage got
8 get an accurate reflection.

9 Q. And so generally speaking, the aroma hops
10 are generally contracted more than the high alpha hops,
11 at least in today's environment.

12 A. Well, I would say every variety,
13 including every variety below the CTZ, Millennium,
14 Warrior, that kind of generic alpha-type hops, even the
15 specialty alphas, those are all -- those for a large
16 part have contracts associated with them.

17 Q. So then you could make the assumption
18 that while 75 percent of your production is contracted,
19 less than that of your pounds of alpha are contracted?

20 A. I'd have to go back and to the math, but
21 that might not -- I'd have to see.

22 Q. Well, if the aroma hops are contracted
23 and their the lower alpha...

24 A. Yeah, yeah.

25 Q. So if you followed your past practices of
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1 being fully contracted going into the next year and you
2 were not able to contract that additional 2004
3 production that's open, it's very possible you wouldn't
4 need anywhere near the 138,600 pounds of alpha, is that
5 correct?

6 A. That's correct.

7 Q. And if -- I was just running some quick
8 numbers -- 75 percent and that was of your alpha, you
9 would only need 104,000 pounds of alpha is what I came
10 up with, which would reduce your need to purchase alpha
11 from 79,000 pounds down to 45,000 pounds.

12 A. You're assuming I can't sell the other 25
13 percent.

14 Q. There's a little competition.

15 A. Oh, there is. I do not deny that.

16 Q. A couple other questions and then...

17 A. All right.

18 Q. ...I'll let you go. You've purchased some
19 land recently, and I'm not really curious necessarily
20 about the individual transactions. Can you give us an
21 idea of the value of hop land today?

22 A. I'm not going to give you that number.

23 Q. Well, just a range. I mean, is it over a
24 \$5,000...

25 A. Yes.

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1 Q. ...an acre value?

2 A. Yes, it's a very -- I think other growers
3 would term it a very favorable deal for that other
4 landowner.

5 Q. Is that -- if it's a very favorable deal,
6 it's not atypical, then, or it may be atypical that land
7 in the lower valley may be selling for something quite
8 less than that?

9 A. I don't know. All I know is -- all I
10 know is what -- I don't know. I'm not plugged into what
11 the lower valley hop land sells for, so I'm not really
12 sure what a number -- what the Moxee number is. So I
13 know what the Moxee has to be to out compete my
14 neighbors.

15 Q. The value that's been assigned in your
16 model, that's assuming what the value base is going to
17 be, has a tremendous impact, it would appear to me, on
18 what the total cost would be, do you agree?

19 A. Oh, you're right. You're right.

20 Q. So if that was 10 cents per pound, the
21 per pound of hops, bringing in to \$1 a pound for the
22 base, then effectively, the cost would be 20 percent of
23 what you've indicated, isn't that true?

24 A. That's correct. That's correct.

25 Q. And I was just going through some quick

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1 numbers and -- because I've been trying to get an idea
2 if this marketing order came in what the value base
3 would be as well.

4 A. Um-hum.

5 Q. And on high alpha hops, can you give us a
6 rough estimation, just real quick, that total pounds of
7 alpha produced on super alpha?

8 A. Per acre?

9 Q. Yeah.

10 A. A range? I'd say from 4 to 600 pounds an
11 acre.

12 Q. Would you say 450 is kind of the number
13 that's gets thrown around? 3,000 pounds times 15
14 percent.

15 A. Yeah, yeah, that's marginal in today's
16 competitive environment, but I'll give you that.

17 Q. So if the figure that's been utilized
18 here, 50 cents per pound -- \$5 a pound, we're talking
19 about \$2,250 cost for base is the assumption that you're
20 making. Do you feel that that's a realistic price to
21 use in view of the fact that this industry isn't making
22 any money, that spot hops are below the cost of
23 production. We've had that testified to many times.
24 There is no future contract, so don't you think that's
25 kind of a high value to assign to base when the industry

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1 doesn't make any money?

2 A. Well, not necessarily, because not every
3 producer is buying base just for super alpha hops. What
4 if you have -- I know growers who grow all Galena and
5 Chinook, okay, and that -- in fact, that's an alpha --
6 those are two alpha varieties. And that grower might
7 have to purchase, you know, on that basis. So that
8 might be a reasonable number. So to try and come up
9 what the price of base is going to be is an infinitely
10 complex deal. And I am sure you've been trying hard,
11 but I -- because everybody's situation's different,
12 because some people might need to buy a base for aroma
13 varieties, some might need to buy a base of alpha
14 varieties, some might need to buy a base for specialty
15 alpha varieties. So they all have a different cost
16 structure.

17 Q. I recognize that, but without getting
18 into the -- we've talked about before that if a grower
19 is primarily growing aroma hops, he's going to have
20 plenty of aches, would you agree?

21 A. It depends on -- you know, once again, it
22 depends on his past production history.

23 ***

24 MR. SMITH: I have no further questions, Your
25 Honor. Thank you, Eric.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Smith. Are there other questions from those who are in
3 a position in favor of a marketing order? There are
4 none. Are there neutral questions? I'll start with
5 USDA. Dr. Hinman?

6 ***

7 BY DR. HINMAN:

8 Q. I think it's safe to say you have risen
9 to the ranks of a large grower?

10 A. That would be correct.

11 Q. I do have a question just to clarify your
12 example...

13 A. Okay.

14 Q. ...for the total market. What each of
15 the examples here -- basically, if you could help me
16 with the term generic alpha versus specialty alpha.
17 What do those terms actually mean here in this case?

18 A. Okay. Let's see. Okay. Well, I guess
19 they're -- how I classify the hop market, I classify it
20 in three different classes. I think there's a generic -
21 - there's brewers out there that use generic alpha,
22 primarily overseas. And the only type of hops that can
23 compete in that arena is the ones that can produce the
24 most alpha pounds per acre. Then there is a second
25 range of alpha hops, which I'll refer to as specialty

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1 alpha hops, and those are usually grown for a specific
2 brewer demand. And so just as a -- I just broke it out
3 that way just because that's how I look at. Then the
4 third category would be aroma hops and that would be
5 anything kind of below the -- this is in my mind -- 10
6 percent alpha or less. So that's how I break it down.
7 I just did it that way -- well, I did it that way really
8 because the other aspect of this order that has -- we've
9 all been talking about aroma and alpha. The alpha side
10 of the market is a little bit more complicated than just
11 saying the alpha side. The -- there's a whole realm of
12 alpha hop varieties that are special hop varieties, such
13 as Galena. Galena goes to a handful of brewers around
14 the world and is a very specifically demanded alpha
15 variety of hop. Chinook goes all to Coors. It's a very
16 specifically demanded alpha hop. So, you know, somebody
17 when they're saying they're raising alpha or aroma, they
18 could be -- when they say alpha, they could be growing
19 all Galenas and Chinook, which are every bit as --
20 varieties that are every bit as independent of each
21 other than maybe some of the aroma hops. Now, there's a
22 degree of substitutability as you go higher up the alpha
23 chain, there's no doubt about that. But some of these
24 other varieties are highly -- these alpha varieties are
25 highly specialized.

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1 Q. Could you name just a few of what you
2 include in high alpha other?

3 A. That's a line item on the HGA stat
4 packet, I believe, and it's for all proprietary
5 varieties and experimental varieties and stuff like
6 that. I think they break it out by high alpha, alpha
7 and aroma or something like that.

8 Q. In the estimated an alpha column, these
9 are interesting figures for us. Would it be -- could
10 you say in terms of your perception of industry views --
11 I know this is a highly debatable topic we've heard.

12 A. Um-hum.

13 Q. If you put a certain percentage on either
14 side of those, one percent up and down, would that, in
15 your view, represent entry consensus on that? Two
16 percent on each...

17 A. Yeah. I think all those numbers are plus
18 or minus one.

19 Q. That would represent -- many growers
20 would agree, many growers...

21 A. Yeah, I think so. I think so. I mean,
22 you know, it's in the proponent's best interest to drive
23 the level of projected total on the down. It's in the
24 opponent's best interest to drive the projected total
25 allotment up. So you know I tried to come up with

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1 something fairly reasonable and I think most growers in
2 the room would agree that one percent on either side of
3 those numbers is pretty close.

4 Q. Okay. And then one final question for
5 clarification. On page two of that the -- could you
6 explain again the -- that's assumed inventory -- why
7 there is nothing in that column?

8 A. Well, when I first did this, there was --
9 you know, one of the big reasons supposedly for the
10 marketing order was -- and it was for the -- it was
11 because there was so much inventory buildup. And so
12 with the crop disaster it's been stated by numerous
13 merchants in that a lot of that inventory's going to be
14 able to move into the system in the next six to eight
15 months. So for coming up with salable levels to be
16 conservative, I guess, to come up with a conservative
17 salable number, I just took it out of there, because we
18 were -- that was one part of the projection where we
19 were making some pretty large assumptions, because
20 nobody has knowledge of what's actually out there. So
21 in the interest of keeping the numbers as clean as I
22 could, I just got rid of it. Because it -- if you --
23 basically, the I think of it is, is if you put some
24 numbers in that column, it essentially just drags the
25 salable down.

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1 ***

2 DR. HINMAN: Okay. Thank you very much, Mr.
3 Desmarais.

4 ADMINISTRATIVE LAW JUDGE: Are there other
5 questions from USDA representatives? There are none.
6 Are there any other questions from anyone for Mr.
7 Desmarais? Mr. Moody?

8 MR. MOODY: Yes. I'm going to hand out a
9 document, Your Honor.

10 ADMINISTRATIVE LAW JUDGE: All right.

11 MR. MOODY: Or have one of my colleagues
12 hopefully do it.

13 ADMINISTRATIVE LAW JUDGE: All right. Let's
14 go off record while you do that.

15 ***

16 [Off the Record]

17 [On the Record]

18 ***

19 MR. MOODY: It would be Exhibit 64.

20 ADMINISTRATIVE LAW JUDGE: Okay. Mr. Moody,
21 I've marked the exhibit as Exhibit 64 and it's on Hop
22 Growers of America letterhead.

23 MR. MOODY: Right. And what this is, Your
24 Honor, is we've looked some more in response to
25 Brendan's concern that other hop contract might've been

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1 a draft and this is the one that was finally sent out.
2 And I have not analyzed it carefully to see if there
3 were any changes in it, but this is the one that was --
4 this is concerning that commitment to vote on the
5 federal marketing order. Anyway, this is the one that
6 was finally sent out. And I'm going to ask -- there are
7 a couple questions about it.

8 ADMINISTRATIVE LAW JUDGE: You may.

9 ***

10 BY MR. MOODY:

11 Q. Eric, do you see your name on this letter
12 at the bottom?

13 A. I certainly do and that's probably what
14 Mr. Monahan was referring to. I would say it's the
15 same. It's probably safe to assume I hadn't resigned
16 yet.

17 Q. Okay. All right. But this is the group
18 -- these people are the group that you were part of that
19 he was mentioning?

20 A. I believe so.

21 Q. Okay. And this is the document that was
22 sent out?

23 A. I believe so. That's my understanding.
24 I didn't sign it, so I don't know, but I believe so,
25 yes.

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1 Q. All right. And then from the information
2 you later saw posted on hopnet, which is -- it's a PNET
3 [ph], which is the, you know, industry computer base and
4 chat forum. Your -- the industry was kept up to date
5 regularly as to how many contracts were signed and sent
6 back and what percent that represented?

7 A. Correct.

8 Q. Okay. Mr. Monahan cleverly attempted to
9 get you to agree that belonging to the Hop Union was
10 like base. Okay. So let's explore that for just a
11 second. Let's look at just a couple of differences.
12 First of all, you pay to get in the Hop Union, but
13 you're getting service back for that money, correct?
14 You paid it in effect to yourself, you're the owner --
15 you're still the owner of that money, is that correct?

16 A. Sure.

17 Q. If you had to buy base from some other
18 grower, that'd be just, you know, transferring wealth to
19 somebody else.

20 A. Exactly.

21 Q. Okay. Isn't it also true that you're
22 allowed and permitted to sell the rest of your hops
23 anywhere you want?

24 A. I am and I do. I have several aroma
25 varieties that I deliver both to the Hop Union and to

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1 outside sources.

2 Q. So this investment is just part of your
3 overall market strategy?

4 A. True.

5 Q. All right.

6 A. And, well, some of my expansion is due to
7 the purchase of this business, too.

8 Q. All right. Is there any reason you can
9 think of to equate your investment from not being in
10 with buying base and culling and both the right to
11 market hops?

12 A. I don't think there's any connection at
13 all.

14 Q. There was some testimony from another
15 witness this afternoon. I believe it was Mr. Hogue that
16 said that lenders were expressing some concern. I
17 gather you, you know, meet with bankers all the time.
18 Are you able to obtain necessary financing for your hop
19 operations?

20 A. I am, but it's a full-time job.

21 Q. You mentioned -- or maybe it was in
22 response to Brendan's questions. This alliance pool,
23 now, is that where several of you have pooled your hops
24 and then a committee set a price on that pool?

25 A. Yeah. I don't have specific

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1 recollection, but if I remember right, it was -- there
2 was -- it kind of stratified or stratified spheres or
3 lines of -- and they were priced at certain levels and
4 people would put their hop -- their variety in and pick
5 the pricing level that they wanted, something along
6 those lines. I don't remember, specifically, though.

7 Q. Wasn't there some committee effort to set
8 a price?

9 A. That -- I don't specifically recall that.

10 Q. Do you recall whether they cleared out
11 the pool?

12 A. That I don't know, because I wasn't
13 intimately involved with it, so I don't know if they
14 cleared out the pool. I'm not sure.

15 Q. Okay. You don't deal with those -- that
16 group anymore?

17 A. No.

18 ***

19 MR. MOODY: Okay. Thank you very much.

20 ADMINISTRATIVE LAW JUDGE: Did you ask him all
21 your questions about Exhibit 64? Did you...

22 MR. MOODY: Yes. I don't know if we moved the
23 other one into evidence yet, the earlier -- the draft
24 version.

25 ADMINISTRATIVE LAW JUDGE: You did and that
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1 was objected to and I said I would reserve my ruling.
2 Are you willing to withdraw Exhibit 44?

3 MR. MOODY: I don't mind if it stays to
4 accompany the record. You know, that doesn't bother me.
5 But this is the one I wanted in as evidence.

6 ADMINISTRATIVE LAW JUDGE: Would you have any
7 objection if I decided to reject Exhibit 44?

8 MR. MOODY: No, just as long as it accompanies
9 the record.

10 ADMINISTRATIVE LAW JUDGE: All right. I do
11 reject Exhibit 44. Is there any objection or does
12 anyone wish to voir dire this witness about Exhibit 64?
13 Let me start with -- if anybody wants to voir dire the
14 witness about 64 or ask any questions to follow up what
15 Mr. Moody has just covered?

16 MR. MONAHAN: I'll have some questions, Your
17 Honor, but I think they can wait for recross.

18 ADMINISTRATIVE LAW JUDGE: Okay. All right.
19 You may begin your recross, Mr. Monahan. You're done
20 aren't you, Mr. Moody?

21 MR. MOODY: Yes, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: All right. You may
23 begin, Mr. Monahan.

24 ***

25 BY MR. MONAHAN:

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1 Q. I just want to ask you about a couple of
2 the statements that I see in Exhibit 64. Again, this is
3 written from Hop Growers of America, signed by Douglas
4 McKinnon.

5 A. Um-hum.

6 Q. And you worked with Mr. McKinnon a fair
7 amount, have you not?

8 A. Yeah. Yes.

9 Q. The first sentence states, we have an
10 unhealthy industry and we must conquer our own
11 challenges as American hop growers. Sir, when you were
12 member of the production management team, was that a
13 sentence you agreed with -- a statement you agreed with?

14 A. Well, my name's on the document that -- I
15 think I believed at that time that I was willing to look
16 at ways to maybe conquer that challenge.

17 Q. Did you get a copy of Exhibit 64 when it
18 was...

19 A. I did not.

20 Q. This is the first time you've seen it?

21 A. Yeah, at this hearing. Well, I don't
22 know. I don't know if they -- I'm sure they mailed it
23 out to everybody in the industry, so I'm sure I had
24 received it then.

25 Q. In the second paragraph it says you will

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1 find below a list a growers who participate in the
2 development of this plan along with their phone numbers.
3 And please do not hesitate to contact any team member
4 with any questions or comments. Did anybody call you
5 about this?

6 A. I don't believe so or they got the wrong
7 phone number.

8 Q. Oh.

9 A. So...

10 Q. So if they did call you, you wouldn't
11 know about it?

12 A. They wouldn't have known about it.

13 Q. The second paragraph states that HGA
14 production management team has devoted countless hours
15 to formulate a plan based on industry input and grower
16 comments. Were you part of that effort in devoting
17 those countless hours?

18 A. Oh, I think I've already testified that I
19 provided some input early in the process.

20 Q. And it says all the terms presented -- I
21 presume -- I'll take Mr. Moody for his word that the
22 three-page document attached to this letter is what was
23 enclosed with it. It says all the terms presented in
24 the attached document were analyzed and discussed at
25 length by the committee over the last two months. You

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1 participated in those lengthy discussions and analyses,
2 did you not?

3 A. Well, I believe it says over the last two
4 months, so this was dated, you know, some time -- you
5 know, March, right at the beginning of March here. Or I
6 don't know when this was dated, but, you know, certainly
7 I would've had some time -- you know, that would've
8 overlapped maybe some of the earlier -- you know, there
9 might be some overlap, sure.

10 Q. He indicates -- Mr. McKinnon does, that
11 the attached document has been analyzed and discussed at
12 length. And I should just ask you, the three-page
13 document that appears at pages two, three and four of
14 Exhibit 64, that was something that you had read,
15 review, analyzed, discussed at length, is it not?

16 A. I haven't. This document, I believe, was
17 -- if I understand it right, it was drawn up by someone
18 in your firm, and I was not at the meetings when they
19 formulated this language.

20 Q. When's the first time you saw this?

21 A. Like I said, I'm sure I saw it when HG
22 mailed it out to everybody in the industry, so that
23 would probably be the first time I saw it.

24 Q. Explain the last sentence of Mr.
25 McKinnon's letter. And I'll read it into the record.

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1 "Only once the 6,500 acre goal has been reached and the
2 contracts become binding will the USDA provide the HGA
3 with a copy of the actual contracts." Do you know what
4 that means?

5 A. I believe the goal -- the stated goal was
6 that you had to -- they had to reach 6,500 acres in the
7 industry -- the United States industry for this contract
8 -- I mean, it says to become binding. And we've heard
9 testimony that -- from what I understand, that that goal
10 was reached.

11 Q. I'm going to ask you to turn to -- I'm
12 sorry. I referred to it as a three-page document, but
13 apparently there's printing on both sides of some pages.
14 What is marked as page two of the hop producer
15 agreement, paragraph four.

16 A. Okay.

17 Q. Federal hop marketing order. Can you
18 read that into the record, sir?

19 A. "Producer does hereby irrevocably agree
20 to vote in favor of or otherwise affirmatively support a
21 commencement of procedures by the secretary of
22 agriculture to adopt a federal marketing under the
23 provisions of 7USCA-608C, as long as a proposed federal
24 hop marketing order includes substantially the following
25 features."

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1 Q. Unless someone would like you to read the
2 features, I just want you to concentrate on that part.

3 A. Okay. All right.

4 Q. Would you agree that this language was
5 what Mr. McKinnon and the other members of the
6 production management team inserted to see if there was
7 support for creating a proponents committee?

8 A. I have no idea why -- I don't have enough
9 information to answer that question.

10 Q. You don't remember discussing it and
11 analyzing it at length?

12 A. No. Like I said, I never discussed -- I
13 never saw this document until it was mailed to me by
14 Doug McKinnon.

15 Q. Did you sign it?

16 A. I did not.

17 ***

18 MR. MONAHAN: That's all I have.

19 ADMINISTRATIVE LAW JUDGE: All right. Thank
20 you, Mr. Monahan. Are there any other questions from
21 anyone? Is there any objection to the admission into
22 evidence of Exhibit 62, which is the colorful bar graph
23 chart, a multi-page document? There is none. Exhibit
24 62 is hereby admitted into evidence. Is there any
25 objection to the admission into evidence of Exhibit 63,

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1 which is the one-page hop marketing order projections?
2 There is none. Exhibit 63 is hereby admitted into
3 evidence. Ms. Deskins?

4 MS. DESKINS: Just one question. Did Mr.
5 Desmarais want to add a correction here that his figures
6 do include additional acreage for the 2004 base year?

7 MR. DESMARAIS: I don't -- I mean, if the
8 department would like that for further clarification, I
9 can add that, if that's -- it doesn't make any
10 difference to me.

11 MS. DESKINS: We were just asking if you want
12 to do that, if not, that's fine with us.

13 MR. DESMARAIS: It's fine how it is, I think.

14 ADMINISTRATIVE LAW JUDGE: All right. And is
15 there any objection to that being admitted? That's 63.
16 Mr. Carswell?

17 MR. CARSWELL: I just wanted to clarify,
18 though, that doesn't affect your base allotment,
19 correct? Because you acquired the acreage in 2003.

20 MR. DESMARAIS: Yeah. No, that has no bearing
21 on the calculation. It just indicates what I need to
22 fulfill my anticipated 2004, you know, base allotment.

23 MR. CARSWELL: Thank you.

24 MR. MONAHAN: I'm just going to object to the
25 foundation of the question.

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1 ADMINISTRATIVE LAW JUDGE: All right. The
2 objection is noted. Thank you. Exhibit 63 is hereby
3 admitted into evidence. Is there any objection to the
4 admission into evidence of Exhibit 64? There is none.
5 Exhibit 64 is hereby admitted into evidence. Mr.
6 Desmarais, is there anything additional you'd like to
7 add?

8 MR. DESMARAIS: No.

9 ADMINISTRATIVE LAW JUDGE: All right. Thank
10 you very much. You may step down. I'd like to talk a
11 little bit about scheduling now that it's 4:11. The
12 court reported is going to need some time to break down
13 the equipment and remove it from the room and there may
14 be people here who are technologically advanced who
15 could help with that. Some of these microphones belong
16 to the hotel, some belong to him. I'd like to know how
17 many other witnesses we expect. Mr. Monahan, you have
18 two growers and rebuttal by Mr. Smith?

19 MR. MONAHAN: I have two growers and I'd like
20 a moment to confer with Mr. Smith.

21 ADMINISTRATIVE LAW JUDGE: All right. And
22 you'll confer with Mr. Smith. Mr. Moody, how many more
23 witnesses would you like to call?

24 MR. MOODY: Well, I guess I'm concerned that
25 -- we're willing to give up a couple, but I'm just

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1 concerned that -- I thought there were three or four
2 more that had come that needed to be heard today from
3 Brendan's side.

4 ADMINISTRATIVE LAW JUDGE: Two more from
5 Brendan's side. How many from yours?

6 MR. MOODY: Nobody.

7 ADMINISTRATIVE LAW JUDGE: Ah, we're going to
8 make it. That's great. Let me announce for the record
9 the time that was consumed on Wednesday 22, October,
10 2003. The time I had not yet reported for that day
11 began at 1:04 in the afternoon and ended at 8:26 that
12 evening. On that day, the time consumed by those
13 speaking in favor a marketing order was one hour and a
14 quarter. The time consumed by those in a position
15 against the marketing order was four and a half hours.
16 That was primarily cross-examination of Mr. Roy. All
17 right. Mr. Monahan, would this be a good time to take a
18 break?

19 MR. MONAHAN: My sentiments exactly.

20 ADMINISTRATIVE LAW JUDGE: All right. Let's
21 take a 10 minute break. Please be back and ready to go
22 at 4:23.

23 ***

24 [Off the Record]

25 [On the Record]

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1
2 ADMINISTRATIVE LAW JUDGE: We're back on
3 record at 4:25. This is the last time I expect to
4 announce time consumed. Time consumed since 2:18 this
5 afternoon is an hour by those in favor of the marketing
6 order and 45 minutes by those against. All right. Mr.
7 Monahan, you may call your next witness.

8 MR. MONAHAN: Thank you, Your Honor. The
9 proponents call Doug McKinnon. That was a practical
10 joke. I'm sorry. Proponents call Dan Newhouse. And
11 just, Your Honor, for planning purposes, the proponents
12 will call Dan Newhouse. Our final witness will be
13 Darren Gamache and we will present no rebuttal
14 testimony.

15 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
16 Newhouse, I'm going to mark your exhibit as Exhibit 65.
17 And is there one that you consider the original?

18 MR. NEWHOUSE: Okay.

19 ADMINISTRATIVE LAW JUDGE: This one? Would
20 you sign that for me and I'll make that the record copy?

21 MS. DESKINS: Your Honor, while we're doing
22 procedural things, maybe it would be good to know for
23 the parties that they will have an opportunity to file
24 briefs, so they will have a chance to make more
25 arguments and it's not necessary to do it now.

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1 ADMINISTRATIVE LAW JUDGE: All right. That's
2 good. Ms. Deskins, would you just briefly outline what
3 will happen once we conclude today?

4 MS. DESKINS: Okay. Once the hearing is
5 closed and the transcript is ready, a briefing schedule
6 will be set today and you'll have an opportunity to
7 review the transcript and to file a brief in which you
8 can state whatever conclusions or arguments that you
9 want. After that, the department will consider the
10 record, what you've filed and issue a recommended
11 decision. Once the recommended the decision is filed,
12 you'll have a chance to file what's called exceptions to
13 that. Now, depending on what the recommended decision
14 says will depend on what the next step -- if it does
15 find that there's evidence for a marketing order, then
16 the steps would be to consider whether to vote on the
17 order by the producers. If the department decides not
18 to issue an order, that would be the end of it.

19 ADMINISTRATIVE LAW JUDGE: Ms. Deskins, where
20 will people find the transcript on a website?

21 MS. DESKINS: Okay. It's going to be on the
22 USDA website. If you go to www.usda.gov, and then if
23 you look on there, there's sections for different
24 agencies. This is being conducted by the Agricultural
25 Marketing Service. Find that site and if you click that

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1 on, there's various sections and one is fruit and
2 vegetables, click that on and there should be a section
3 that'll say hops. If you click that on, the transcript
4 and exhibits will be available there. I can't say when,
5 because it depends on when the transcript comes in. And
6 also, Your Honor, for those locally, the transcript and
7 the exhibits will be available at the Portland office
8 the Agricultural Marketing Service and a copy will be
9 available in Washington D.C. at the hearing clerk's
10 office, which is located in the USDA building on 12th
11 and Independence Avenue, Southwest.

12 ADMINISTRATIVE LAW JUDGE: Thank you very
13 much. Now, with regard to the schedule for any
14 proposals for changes to the transcript and briefs, I'd
15 like to tie that to the time beginning when the
16 transcript appears on the USDA website. Now, first, the
17 transcript has to be presented to the hearing clerk. My
18 experience in a lengthy hearing like this is that it
19 probably will not be there for a month. So it will
20 probably be at least a month before that transcript will
21 even get to the hearing clerk. The hearing clerk will
22 then forward to the Agricultural Marketing Service a
23 copy of it. Only then can the effort begin to put in on
24 the website. So the time for you to suggest corrections
25 to the transcript and submit briefs should be a

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1 deadline, a certain number of days after the transcript
2 and exhibits first appear on the website. Does anyone
3 have a suggestion for how we might proceed? I can
4 estimate that and set a date certain if you would be
5 most comfortable doing that way. That probably is the
6 best. I would estimate that those documents will not
7 appear on the website until about six weeks from now.
8 So that would put in about the middle of December -- the
9 middle of December. So the briefs and the corrections
10 to the transcripts need to be due some date in January
11 where you have not had to work through your holidays.
12 Mr. Moody?

13 MR. MOODY: Well, I was going to say February
14 15, but -- since Your Honor has offered up January, I'll
15 say January 30 -- or 31, if that's a workday.

16 ADMINISTRATIVE LAW JUDGE: Good. Ms. Dec may
17 have a 2004 calendar. I do not. I don't have any
18 objection to February if it -- you know, if you need
19 that much time. I don't know -- it's going to get us
20 into a new growing season and we'll be in a whole
21 different marketing year, but I don't know if there's
22 any help for that. Mr. Deskins?

23 MS. DESKINS: January 30 is a Friday.

24 ADMINISTRATIVE LAW JUDGE: Okay. And that
25 would be a date that your briefs and your proposed

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1 corrections to the transcript should be filed with the
2 hearing clerk. And I would advise you to be aware that
3 if you use mail, even if you use next-day delivery
4 postal service, that will be diverted for irradiation
5 and will be delayed and will probably miss the filing
6 date. So I would suggest that you use a next-day
7 delivery such as FedEx or UPS, that way you can count on
8 it reaching the hearing clerk in time. So I will set
9 the filing date -- the filing deadline. You don't have
10 to wait until the deadline, you can send it early. I
11 would suggest that you use Friday, January 30, 2004. Is
12 there any objection to that? There is none. I would
13 suggest that you also distribute copies of your
14 suggested transcript corrections and brief to one
15 another. Those you who have -- who are counsel and will
16 be submitting those, you would have the addresses of
17 other counsel, and I would suggest that you do that. I
18 think it would be very helpful. All right. Anything
19 further on that? Mr. Monahan?

20 MR. MONAHAN: Your Honor, I would just ask Mr.
21 Newhouse to introduce himself and to -- if he has been
22 sworn to address the statement that he has prepared.

23 ADMINISTRATIVE LAW JUDGE: Mr. Newhouse has
24 been sworn. Let me refresh myself as to when that was.

25 MR. NEWHOUSE: That's a long time ago.

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1 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Newhouse,
2 you were sworn on 16 October, 2003. So if you would
3 again state your full name?

4 MR. NEWHOUSE: My name is Daniel M. Newhouse.

5 ADMINISTRATIVE LAW JUDGE: Thank you. And
6 spell your name.

7 MR. NEWHOUSE: D-a-n-i-e-l, the letter M,
8 N-e-w-h-o-u-s-e.

9 ADMINISTRATIVE LAW JUDGE: Thank you. You
10 remain sworn and I have marked your exhibit as Exhibit
11 65. Do you wish to begin by reading your statement into
12 the record?

13 MR. NEWHOUSE: In the interest of time, I've
14 just a brief statement and then I'll read my prepared
15 text.

16 ADMINISTRATIVE LAW JUDGE: Thank you.

17 MR. NEWHOUSE: I would just like to say that I
18 began in the hop growing business myself in 1979, lured
19 back to the farm by the prospect of a constant and
20 stable hop market and it's been a wild ride ever since.
21 And for the record, I'm of Dutch extraction, one of the
22 few in the industry, which isn't too far from the
23 country of France, I guess. I've been involved in the
24 industry over the last 24 years serving on the hop
25 growers Washington board, as well as the Hop Growers of

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1 America. From my prepared text I'll just take a minute,
2 since I know that we're pushing up against the deadline.
3 Thank you for the opportunity to express my support for
4 the proposed hop marketing order. I come from a large
5 hop growing family starting the 1940's. There were at
6 one time seven Newhouse families growing hops on 2,000
7 acres in the same area southwest of the city of
8 Sunnyside. Today there are three of us left, last year
9 raising less than 600 acres. My own farm is reduced to
10 less than half of what we formally raised. This is a
11 shrinking industry. Total acres are shrinking, people
12 have left voluntarily and involuntarily. An unstable
13 market has cost the industry tremendously, both in
14 financial and human terms. The current market system I
15 predict will continue to have the same affect until the
16 American hop industry is reduced from the 50 or so
17 growers today to just a handful of very large growers.
18 We have been our own worst enemy. Because of our
19 ability to respond to price fluctuations so rapidly
20 compared to other producing regions and the independent
21 nature of the American farmer, we generally have too
22 many hops chasing too few markets. Many in the industry
23 understand this as a problem. No one believes
24 everything is fine, we just have different opinions as
25 to the solution. Many of us have come to the conclusion

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1 through years of experiencing these losses and
2 discussing with our fellow growers what can or should be
3 done that a new hop marketing order would give us the
4 tools necessary to return stability to our industry.
5 Has this been an easy conclusion? No, it hasn't. We
6 actually wanted something, anything but another order.
7 A voluntary solution without government involvement
8 would've been the best way to go. As you have heard, we
9 tried that. While many participated in a voluntary set
10 aside effort to reduce the surplus that plagued our
11 industry, others actually increased production. It has
12 become painfully obvious that as an industry we needed
13 the structure that a federal order provides. There have
14 been concerns that an order will restrict supply to
15 artificially increase prices and in the process lose
16 market share to foreign producers. I disagree with that
17 notion. First of all, the order will manage any over or
18 undersupply. More closely aligning supply with demand,
19 in my mind, is not restricting, but is balancing. If
20 that has a positive affect on prices, that would be a
21 good thing. But keep in mind that in an international
22 market our prices must reflect the worldwide situation.
23 If prices rise higher than the market, we will hear that
24 message. No one is suggesting we at any time produce
25 less than our consumers require. That would be foolish.

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1 However, producing more than our markets can absorb does
2 not garner any extra market share is equally foolish.
3 As of our personal situation, we would be better off if
4 the period used to determine base would go back more
5 than five years. We started reducing our acreage 10
6 years ago, while others have increased or remained
7 constant. Even so, I believe we would be better off at
8 a reduced production position than our historical high
9 and be provided the opportunity to continue producing
10 than remain as we are. Many have expressed concerns of
11 government intervention in our industry. I respect that
12 concern. In my view, a federal marketing order is only
13 a tool that we can use and industry to manage our
14 oversupply. It will run by us, decision will be made by
15 us and we will be responsible to ourselves. Is it
16 perfect? No. Does it guarantee success of any
17 individual or the industry? No. Does it prevent the
18 possibility of us making mistakes? No. But I believe
19 it offers the best chance for us an industry to remain
20 competitive and survive. I'm asking not that you have
21 heard the cases presented for and against that you take
22 the next logical step. Allow us, the industry, to vote
23 on whether or not an order is the solution we need. A
24 referendum will decide this issue and we can then go
25 forward, whatever the result, together working for the

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1 future of our industry. Thank you.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
3 Newhouse. Does anyone object to the admission into
4 evidence of Exhibit 65? Exhibit 65 is hereby admitted
5 into evidence. Mr. Newhouse, is there anything further
6 you'd like to add before I open the floor to questions?

7 MR. NEWHOUSE: I don't think so.

8 ADMINISTRATIVE LAW JUDGE: Thank you. Are
9 there any questions for Mr. Newhouse? Are there any
10 questions from anyone for Mr. Newhouse? Dr. Hinman, do
11 you need to ask yours?

12 DR. HINMAN: It came around so quickly this
13 time I guess I wasn't quite ready, but, yes. Dan -- Mr.
14 Newhouse, can you answer the question about the -- your
15 size relative to the \$750,000 threshold between small
16 and large grower according to the Small Business
17 Administration?

18 MR. NEWHOUSE: With respect to hops?

19 DR. HINMAN: Hop sales first and then total
20 sales of all agricultural commodities.

21 MR. NEWHOUSE: With respect to hops, we would
22 be consider a small grower. However, our overall
23 operation, we would fall into the large grower category.

24 DR. HINMAN: Thank you very much.

25 ADMINISTRATIVE LAW JUDGE: Thank you. Are

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1 there any other questions for Mr. Newhouse? This is
2 definitely the time of the proceeding to testify.

3 MR. NEWHOUSE: I would say so.

4 ADMINISTRATIVE LAW JUDGE: You may step down.
5 I wish Mr. Roy had thought of that.

6 MR. ROY: I'll remember next time.

7 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, you
8 may call you next witness.

9 MR. MONAHAN: Our last witness, as it were,
10 Your Honor. Proponents call Darren Gamache.

11 ADMINISTRATIVE LAW JUDGE: Mr. Gamache, while
12 those copies are being distributed, would you please
13 state and spell your name?

14 MR. GAMACHE: My name's Darren Gamache,
15 D-a-r-r-e-n, middle initial A, Gamache, G-a-m-a-c-h-e.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Would
17 you raise your right hand, please?

18

19 [Witness sworn]

20 ***

21 ADMINISTRATIVE LAW JUDGE: Thank you. Would
22 like to begin by reading your statement into the record?
23 Does it contain enough of background so we'll understand
24 where you're coming from?

25 MR. GAMACHE: I think it does.

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1 ADMINISTRATIVE LAW JUDGE: All right. You may
2 proceed.

3 MR. GAMACHE: My name is Darren Gamache and
4 I'm a fourth-generation Washington hop grower. I am
5 currently employed as a controller, quality control
6 supervisor and general jack-of-all-trades by Virgil
7 Gamache Farms, Incorporated, a company owned by my
8 father and his brothers. I have been around hops and
9 hop growing all of my life. However, it has only been
10 within the last five years that I have actively
11 participated at the industry level. Since I started
12 participating it has become apparent to me that the
13 industry requires the stability of an industry-wide
14 marketing order. I justify this opinion based on the
15 following observations. Over the last 10 years a
16 certain level of industry consolidation has occurred.
17 This consolidation is not limited to just the producer,
18 it also encompasses the handler and end-user. I cite
19 the recent merger of Hocking [ph] in USA with the John
20 Barth Company, and the recent purchase of Miller Brewing
21 Company by South African Breweries. The significance of
22 these mergers to a producer and handler is that the
23 amount of product necessary to fill a sale is much
24 greater, thus the investment in infrastructure must be
25 large enough to had the large increases of throughput.

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1 However, conversely, if the sale is not made, large gaps
2 in throughput also appear, thus affecting the health of
3 those firms involved. A marketing order will slow down
4 the number of large volume shifts within the industry.
5 Secondly, the industry has experienced a severe loss of
6 equity due to the current market instability. Two farms
7 of very similar sizes, 212 acres and 208 acres,
8 respectively, and production capacities -- similar
9 production capacities were sold. The first was sold six
10 years ago in 1997 and the second sold this last spring
11 of 2003. The first farm sold to a local hop grower for
12 \$2.4 million, while the second and most recent sale was
13 to handler for \$850,000. The seller of the most recent
14 sale felt that he should've received 40 percent more for
15 his hop farm and equipment, but due to the recent
16 overproduction of hops, he received substantially less.
17 An active hop marketing order would've provided the
18 secondary affects of equity stability. This is an
19 important concept, especially when operations outweigh
20 the benefits of reinvestment or recapitalization in the
21 industry. And, of course, recapitalization is
22 absolutely essential to the long-term survivability of
23 any industry. Lastly, the hop industry has created what
24 is known in the trade as downstream products. These
25 products are raw hops that have been processed into

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1 forms that are more stable, easier to handle and refined
2 or have an enhanced potency. These products are not
3 necessarily new to the industry, but they will have the
4 same affect on the production acreage that the adoption
5 of super high alpha hops did. An active hop marketing
6 order gives the hop industry a tool to keep supply in
7 balance with demand. Finally, I'd like to thank the
8 USDA for providing a forum to debate and refine the
9 concepts surrounding the proposed marketing order.
10 Thank you.

11 ADMINISTRATIVE LAW JUDGE: Thank you very
12 much, Mr. Gamache. I'm going to mark Mr. Gamache's
13 statement as Exhibit 66. Is there any objection to the
14 admission into evidence of Exhibit 66? There is none.
15 Exhibit 66 is hereby admitted into evidence. I would
16 now open the floor for questions for Mr. Gamache from
17 anyone. Dr. Hinman?

18 DR. HINMAN: You've heard me ask the previous
19 question about the size of the farming operation that
20 you're involved in, about whether it has in a typical
21 recent year more or less than \$750,000 of sales from
22 hops.

23 MR. GAMACHE: It's more than that.

24 DR. HINMAN: More than that. Okay. Thank you
25 very much.

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1 ADMINISTRATIVE LAW JUDGE: Are there any other
2 questions for Mr. Gamache? There are none. Mr.
3 Gamache, thank you. You may step down.

4 MR. GAMACHE: Thank you.

5 ADMINISTRATIVE LAW JUDGE: Is there any other
6 evidence to come before us in this rulemaking hearing?

7 MS. DESKINS: Your Honor, did you want --
8 people have asked Dr. Hinman to provide additional
9 information. The government isn't authoring it. If
10 people want it put in the record, they should state so
11 now.

12 ADMINISTRATIVE LAW JUDGE: Yes. He was asked
13 on one of our earlier days in Oregon to provide
14 additional data. And I believe it would be good if you
15 could do that for us now, Dr. Hinman. You remain sworn.
16 But if you'll again state your full name.

17 DR. HINMAN: What this is is a bit of an
18 adjustment to the original statistical package of US
19 hops statistical overview, Exhibit 5. And one matter I
20 want to note one correction, which is on table 5C on
21 page 12, it was noted early that a figure there, Idaho,
22 2002 production was not correct. It is 5519.6 of the
23 misstated figure. That is the correct production figure
24 at the bottom of page 12.

25 MS. DESKINS: Dr. Hinman, these pages that are
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1 being handed out, these are to be added to Exhibit #5?

2 DR. HINMAN: Right. I had that one correction
3 to the original statistical package which I've noted.
4 And then what these pages are here will be -- these are
5 numbered so that they can be just be added to the
6 package, which was up to 22 pages. And so one page was
7 table eight. Basically, the intent was to introduce a
8 longer exhibit of parity prices and we have done so back
9 to 1945. And now we have a complete list from 1945 to
10 2002. And because we gave two pages, it is now labeled
11 16 and 16A, so you can just remove the previous table
12 eight all together, and this is substitute.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
14 Hinman.

15 DR. HINMAN: And then there's one additional
16 page.

17 MS. DESKINS: Thank you, Dr. Hinman. What
18 we'd like to do for Exhibit 5, in the manner indicated
19 by Dr. Hinman, we'd like to replace page 16 with what's
20 been handed out, which is 16 and 16A, and add page 23.

21 ADMINISTRATIVE LAW JUDGE: Very fine. Thank
22 you. I will now do that with the record copy. While
23 you continue to discuss these, if you have anything to
24 add, Dr. Hinman.

25 DR. HINMAN: I'll just add, basically, the
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1 titles of the -- in one additional page, table 13, is
2 new information, number of US hop farms. And I would
3 note, you know, for discussion of number of producers,
4 that this is farms, not producers, and we have here the
5 biggest testimony that a producer may have more than one
6 farm. This information from the last two agricultural
7 censuses.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
9 Hinman. Does anyone have any questions for Dr. Hinman
10 with regard to these issues? There are none. I want
11 to point out that just outside the door are apples that
12 have been provided equally by proponents and opponents,
13 so that each one of us here can feel to take as many as
14 we'd like. And so please help yourselves and I thank
15 very much those who contributed those for us. Is there
16 anything further, then, before we -- Mr. Moody?

17 MR. MOODY: Yes. I had a pending request for
18 judicial notice of the record from the 1984 hearing.

19 ADMINISTRATIVE LAW JUDGE: Is there any
20 objection to that?

21 MR. MOODY: And I would only add to what I
22 said before, that there's been so much discussion of the
23 problems and the breakdown in 1984 that is further
24 documented and explained on that record, that coupled
25 with fact that, you know, the USDA, as a matter of law,

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1 would be to provide a greater than normal showing, given
2 they terminated the old order, would have a greater than
3 normal showing to reinstitute essentially a similar
4 order. I think it is relevant that it be part of this
5 proceeding.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Moody. Ms. Deskins?

8 MS. DESKINS: Your Honor, we have to object to
9 that. Each marketing order, even on the same commodity,
10 is based on the rulemaking record of that particular
11 order. The rulemaking record of the previous order
12 wouldn't be relevant here and we don't think it'd be
13 appropriate to take judicial notice of it. To the
14 extent people have testified regarding conditions under
15 the previous order, we think that's relevant. But we
16 don't think it would serve a useful purpose to take
17 judicial notice of that. And I think the other issue
18 might be -- I don't know how much of that record, the
19 rulemaking record would be available at this point. I
20 think some of it might've been destroyed as part of a
21 document reduction, so I don't know if any of it is
22 available.

23 MR. MOODY: Can I...

24 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
25 Deskins. Mr. Moody?

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1 MR. MOODY: Yeah. Actually, the hearing clerk
2 was kind enough to go out to the archive facility to
3 retrieve it from the fire, so the transcript is there,
4 the exhibits are there, the briefs are there. And I
5 went over physically to see it myself and that's why I
6 can attest to the fact that it is there and available to
7 all in the hearing clerk's office.

8 ADMINISTRATIVE LAW JUDGE: Thank you. I
9 decline to take administrative notice of that record.
10 There is ample evidence before us. To the extent that
11 things have changed in the last 15, 20 years, we have
12 extensive discussion from witnesses who were able to
13 bring it into perspective. And so I do decline to take
14 administrative notice of that record and that will not
15 be part of the evidence here. Now, of course, you can
16 argue in your briefs whatever position you'd like to
17 argue with regard to the end of the order. There's one
18 other exhibit that I identified and have not taken into
19 evidence, because we never had the copies and that was
20 the curriculum vitae of Dr. Folwell. Mr. Monahan?

21 MR. MONAHAN: I was able to distribute copies
22 during one of the breaks today, Exhibit 36.

23 ADMINISTRATIVE LAW JUDGE: Okay. I need one
24 as a record copy. Well, I might already have it, but I
25 don't remember. I can check really quickly. Is there

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1 any objection to the admission into evidence of Dr.
2 Folwell's curriculum vitae? There is none. Dr.
3 Folwell's curriculum vitae is hereby admitted into
4 evidence. I'm being handed one by Ms. Deskins. Thank
5 you so much, Ms. Deskins. This will be the record copy.
6 And our last act will be the turning over of all of the
7 exhibits from the court reporter to Ms. Dec, which we
8 will do off record, but we should have exhibits through
9 66, with the exception of those that were withdrawn.
10 And I'll monitor to make sure that that's what we have
11 before we leave here today. Ms. Dec, with regard to
12 these record copy exhibits, I would like you to deposit
13 those with the hearing clerk no later than the time that
14 the hearing clerk has received the last volume of
15 transcript, that way, by the time the transcript is
16 available in the hearing clerk's office, the exhibits
17 will be. And if you'd like -- if you'd prefer that I
18 give you a date certain, I'd be happy to do that. But
19 as I've indicated, I don't think they'll be available
20 for at least a month.

21 MS. DEC: I suspect I'll get them down there
22 long before the transcripts get there.

23 ADMINISTRATIVE LAW JUDGE: All right. Thanks
24 very much. Mr. Moody?

25 MR. MOODY: For my side of the room, I would
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1 like to acknowledge the extraordinary passion and depth
2 and honor and thoroughness and even humor of the
3 testimony from the proponents' witnesses. I don't get
4 out much from the beltway and it's been a wonderful
5 education to come and visit with this industry again.
6 And even though that the record clearly demonstrates
7 some sharp disagreements, I think the heartfelt
8 presentations from both sides have been very, very
9 compelling.

10 ADMINISTRATIVE LAW JUDGE: Well said and I
11 agree with you. Mr. Carswell?

12 MR. CARSWELL: I just want to add my agreement
13 to all of those sentiments and also to the civility in
14 which everybody acted, and I would include both the
15 opponents and the proponents, USDA and Your Honor in
16 that as well.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
18 Carswell. I appreciate all the good work and all the
19 thoughtfulness and the great deal of collective wisdom
20 here. It's interesting, even with this much collective
21 wisdom that there can be such sharp disagreement and I
22 do not envy the secretary in making the decision.

23 MR. MONAHAN: Your Honor, there were 29 five
24 to four decisions in the Supreme Court last year.

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1 ADMINISTRATIVE LAW JUDGE: Good point. Thank
2 you all. We'll adjourn at 4:57.
3 ***
4 [End of Proceedings]

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2
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4 IN RE: HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO,
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6
7 HELD AT: Yakima, Washington

8
9 DATE: October 24, 2003

10
11 We, the undersigned, do hereby certify that the
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13 are the true, accurate and complete transcript prepared
14 from the reporting by the reporter in attendance at the
15 above identified hearing, in accordance with applicable
16 provisions of the current USDA contract, and have
17 verified the accuracy of the transcript by (1) comparing
18 the typewritten transcript against the reporting or
19 recording accomplished at the hearings, and (2)
20 comparing the final proofed typewritten transcript
21 against the reporting or recording accomplished at the
22 hearing.

23
24 Date:

Karen D. Martini

Karen D. Martini, Transcriber
York Stenographic Services, Inc.

28
29 Date:

Sarah Mowrer

Sarah Mowrer, Proofreader
York Stenographic Services, Inc.

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34 Date:

Kearney Barton

Kearney Barton, Reporter
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